

# ZONING BOARD OF APPEALS Ipswich, Massachusetts

**February 18, 2021**

Pursuant to a written notice posted by the Town Clerk and published in the June 7<sup>th</sup> and June 14<sup>th</sup>, 2018 editions of the *Ipswich Chronicle* a newspaper of general circulation and public hearings continued since, the Ipswich Zoning Board of Appeals held a meeting on Thursday February 18, 2021 at 7:30 p.m. remotely via Zoom Video Conferencing, in accordance with the Governor's 3.12.20 Order suspending provisions of the Open Meeting Law to promote public health and safety and social distancing during the public health emergency.

Members tuned in were Chair Robert Gambale, Benjamin Fierro, Lewis Vlahos, Rob Clocker and Justin Planasch Also, Administrative Assistant Marie Rodgers.

**Citizen Queries:** Chair responded to Keri MacRae, 31 Heartbreak Rd, who asked for the 'chat function' to be allowed. The Chair clarified that it will function to the host only. She asked for ongoing matters to be on the agenda a week before the meeting.

Chairman announced the continuation of **25 Pleasant Street, Elder Friendly Housing, LLC**. **Karl Mayer** requests a Comprehensive Permit approval, pursuant to MGL Ch. 40B. Chairman Gambale read the legal notice and re-opened the public hearing and without discussion, it was moved to continue to the March 18, 2021 meeting at 7:00 p.m. remotely via Zoom Video Conferencing.

### **Continued Public Hearings:**

**26 Essex Road** (Assessor's Map 54A, Lot 14A) **36 Essex Road** (Map 54C, Lot 22); **38 Essex Road** (Map 54C, Lot 22A) **42 Essex Road**, (Map 54C, Lot 23) and **44 Essex Road** (Map 54C, Lot 24) **Essex Pastures, LLC** requests Comprehensive Permit approval, pursuant to MGL Ch. 40B, to construct one hundred ninety-four (194) residential rental units, of which forty-nine (49) units would be affordable to households earning no more than eighty-percent (80%) of the area median income. (continued from the June, 2018 all of 2019; all of 2020; January and February 2012)

Chairman Gambale read the legal notice and re-opened the public hearing at 7:37 p.m. Barbara Carboni Special Counsel for the Board was present.

The Petitioner John Bruni was present represented by his Attorney John Smolak, Joseph Peznola, P.E. Hancock Associates, and Edward Marchant Financial Advisor.

Chair initiated discussion concerning the most recent waiver list and questioned which waivers were modified. Attorney John Smolak reviewed four to five edits from the last waiver list.

Chair read into the record letters from concerned citizens residing at 31 High Street; 28 Mineral St; 16 Kimball Ave; 23 Turkey Shore Rd; 10 Bayview Rd; 27 Bayview Road for water usage, density, school children, health and safety.

Mr. Fierro initiated discussion concerning waiver request from the local wetland bylaws. The applicant will file a NOI with the ICC under the State Wetland Protection Act.

Chair Gambale said he spoke with the Conservation Agent and he will forward his comments concerning the waivers requested.

Attorney Smolak assured the Board, that the request for a 3D model and contrast plan showing open space and impervious surfaces are forthcoming and will be available before the next meeting. The waiver list will be updated with numbers for each request, and some waivers that are not needed, will be removed. Chair questioned which ones they were, and Attorney Smolak listed: pg. 3 the storm water bylaw regulations are not needed; pg 4 water & sewer, sewer tie-ins; pg 8 Use regulations Table of

Use Regulations Wholesale Transportation & Industrial Use for Removal of Sand, gravel or loam; pg 18 Dimensional & Density Regulations Section VI.G4; pg 20 Section VII.0; pg 23 Section IX.E and III Common Driveways.

Attorney Carboni will communicate with Attorney Smolak and provide more clarity and explanations of the waiver requests.

In response to Mr. Clocker's request for more clarity and identify exactly how they will deviate from the bylaws, with regards to landscaping. Mr. Peznole said they would provide a closer analysis.

Chair Gambale related his conversation with the Fire Chief who expressed his concerns for the bare minimum for turning radius and staging areas.

Additionally, the latest extension of the 180-day period is dated 2.25.2021. Attorney Smolak indicated he will provide an extension to April 22, 2021 and agreed to continue the public hearing to the March 18, 2021 meeting.

Attorney Smolak requested the Board to authorize Attorney Carboni begin a draft decision for review prior to the next meeting.

Chair heard comments from Keri MacRae 31 Heartbreak Road concerning waiving local bylaws and removal of loam from farm land against an obscure law and the ORAD is over six years old.

Chris Florio, 44 Fellows Road urged the Board to consider comments from the Town departments.

Christina Brendal, 203 Linebrook Road questioned why it's taken so long for the applicant to provide documents requested.

Vickie Hughes, 2 Poplar Street spoke to environmental issues and impacts on wetlands.

Mr. Fierro spoke to the process of deliberations and hearings taking place for two years and eight months.

As there were no further comments or discussion, **in agreement with the Applicant, the Chair continued the public hearing to the March 18, 2021 meeting to be held at 7:00 p.m. remotely via Zoom Video Conferencing. Mr. Vlahos seconded, the motion passed unanimously with a roll call vote.**

*Documents and exhibits used by the Appeals Board:* email letter Joanna Galoski 1.29.2021; email from Joan Wilking dated 1.31.2021; email from Cheryl Yemma dated 2.1.2021; Jennifer and Scott Bauman dated 2.4.2021; Steph Murray 2.2.2021; email letter from Sara & Chris Corcoran dated 2.10.2021.

**Continued at the request of the applicant - 16 Chattanooga Road,** Hamdi Kozlu requests a Special Permit and/or Variance pursuant, but not necessarily limited to, X.I.J, X.I.K., VI.F and Table of Dimensional and Density Regulations Footnote 2 to reduce the left side yard setback from a proposed detached garage (559 S.F. in area) by no more than 50% of the required setback. Property located at Assessors Map 23D, Lot 002 in the Rural Residential B (RRB) Zoning District.

**MOTION:**

**Chair Gambale moved to continue to the public hearing to the 3/18/21 meeting, at 7:00 p.m. via Zoom conferencing. At the request of the Petitioners representative in an email dated 2.18.2021. Mr. Fierro seconded, the motion passed unanimously with a roll call vote.**

*Documents and exhibits used by the Appeals Board:* Petition and associated documents; email dated 2.11.21 from Amy Porter, 15 Chattanooga Road. email dated 2.18.2021 from Larry Graham requesting to continue to the March 18, 2021 meeting.

**27 Town Farm Rd, Wayne Moses** requests a **Special Permit and/or Variance** pursuant to, but not necessarily limited to sections XI.J & XI.K – also, II Applicability A. and B.1, 2, and 5 and VI.F and II.B 5 to construct a detached garage after a fire and reduce the side yard setback by no more than 50% of the required, and to find good cause for an extension of time to construct after a fire. (Assessor's Map 30B Lot 050) located in the Rural Residential A (RRA) Zoning District.

Chairman Gambale read the legal notice and opened the public hearing at 8:25 p.m.

The Petitioner was present and represented himself. He explained his house burned down in February 2019. The new single family dwelling was rebuilt and he plans to re-construct a detached 2-car garage, 30'x 30' for storing his trailer home. He requested an extension of time for one year. The Board reviewed the extension request for good cause.

Discussion ensued regarding interpretation of the bylaws specifically, IIB.5 the Petitioner was hindered by the COVID 19 pandemic. The tolling period under the special acts of 2020 due to COVID would extend time beyond the end of the pandemic. The Petitioner acknowledged, if he needed more time, he would be required to return with such a request before the end date of 2.12.2022.

The Board made a finding pursuant to section IIB 5 for 'good cause' and granted one year extension of time to rebuild and complete the structure that burned down in February 12, 2019; the extension will expire February 18, 2022.

**MOTION:**

**Mr. Gambale moved the Board allow the Petitioner one year extension to 2.12.2022 in order to finish construction of his home and garage after a fire at 27 Town Farm Road. Mr. Vlahos seconded, the motion passed unanimously with a roll call vote.**

The Board reviewed the Petitioner's request to construct a two car garage on the left side of the property, no closer than 50% of the required 20-foot setback. The Petitioner requested a reduction of setback to eight feet, along the driveway to the town's cemetery.

Discussion was held concerning special permit allowing ten-foot reduction vs. a variance with a high threshold for less than ten feet. The Petitioner said he was okay with a ten-foot reduction.

The Board discussed provisions for small undersized lots, qualifying for relief as non-conforming. The lot is comprised of .344 acres, with 75-foot frontage, at the corner of Town Farm Road and Cemetery Road. The existing right side setback is approximately 34 feet. The lot is long and narrow with limiting the building area. The existing septic system also limits the size and location of the addition. The left setback will be reduced to 10-feet.

No one spoke in opposition.

Mr. Clocker led the Board in review of section II Applicability A and B. and criteria 1-6 as set forth in section XI.J for the special permit criteria

**MOTION:**

**Mr. Fierro moved the Board find the applicant has met the criteria as set out by Mr. Clocker, under section II Applicability A and B. Mr. Vlahos seconded and the motion passed unanimously with a roll call vote.**

**MOTION:**

**Mr. Gambale moved the Board grant no greater than 50% reduction of the left side setback, to no closer than ten-feet (10'). Mr. Vlahos seconded and the motion passed unanimously with a roll call vote.**

Discussion was held concerning the special permit request for an accessory structure over 750-square feet. The Petitioner indicated he has no plans for plumbing or water. The proposed height is below 25-feet. Architectural plans were provided showing location of windows, doors, siding and roofing materials will match the house.

Mr. Clocker led the Board in review of section II applicability A and B.

**MOTION:**

**Mr. Gambale moved the Board find the applicant has met the criteria as set out by Mr. Clocker, under section II Applicability A and B. Mr. Vlahos seconded and the motion passed unanimously with a roll call vote.**

Mr. Clocker led the Board in review of section XI.J for the special permit criteria 1-6.

**MOTION:**

Mr. Clocker moved the Board find the proposal meets criteria for a Special Permit in accordance with plans by Eric Coville dated 12.17.2019 titled Moses Residence Garage 27 Town Farm Road, Ipswich , MA L1, S1 and S2. Mr. Vlahos seconded and the motion passed unanimously with a roll call vote.

**MOTION:**

Mr. Clocker moved the Board vote to Grant the Special Permit for the garage larger than 750 square feet no larger than 900 Square feet, no closer than 10-feet to the left side lot line and no taller than 23-feet. Mr. Vlahos seconded and the motion passed unanimously with a roll call vote.

*Documents and exhibits used by the Appeals Board:* Petition and associated documents.

**2 Vincent Road, Richard & Kathleen Comunale request a Special Permit and/or Variance** pursuant, but not necessarily limited to, Sections XI.J, XI.K, II.B.1 and VI.F Table of Dimensional and Density Regulations-footnote 2- for relief from the required left side yard setback to 1.5feet to locate an open-sided woodshed (32'x4'x7') (Assessor's Map 22D/Lot 110/111), located in the Rural Residential B (RRB) Zoning District. (continued from the October, November 2020 and January 21, 2021 meetings)

Chairman Gambale read the legal notice and opened the public hearing at 9:10 p.m. and noted an error the zoning district is not RRB but, RRA. The Petitioner was tuned in to explain his request to allow and continued use of an open sided firewood storage shed located approximately one and one half feet off the property line.

Discussion was held regarding the location of the wood pile; and interpretation of footnote 27 to the Table of Dimensional and Density Regulations, for not more than one storage shed....etc. Deliberations continued regarding the definition of the open-sided woodshed, the size and locating it five-feet from the property line and no closer than five-feet to the house. The Board determine it would be called a shed.

The Petitioner questioned, if the Board had read his most recent submittal; if, he moved it, it would be exposed to the North East wind; it has been there since 1950's; he can't place it anywhere else. He obtained a variance, in order to locate his house. If, he moves it five-feet from the lot line, it will be three-feet from the house.

Mr. Clocker measured the plan and suggested that the wood shed would meet the requirements if it was moved a little to the rear of the property. Location and options were discussed.

Assuming the Building Inspector agrees to call it a shed, the Petitioner can place it five feet from the lot line by right, and no relief from this board would be required.

The Petitioner agreed to speak with the Building Inspector and relate the Board's interpretation for a wood storage shed. If, a building permit is issued, the Petitioner would submit a request to withdraw his Petition.

**MOTION:**

**Chair Gambale moved to continue to the public hearing to the 3/18/21 meeting, at 7:00 p.m. via Zoom conferencing. Mr. Fierro seconded, the motion passed unanimously with a roll call vote.**

*Documents and exhibits used by the Appeals Board:* Petition and associated documents; Petitioner letter dated 2.11.2021 five pgs.; ZBA decision from 1995; letter from James E. Graffum no date; OOC from Conservation Commission dated 7.9.1986; Town Clerk certification dated June 1996;

**241 Argilla Road, Joseph & Kathleen Militello** requests a Special Permit and/or Variance pursuant, but not necessarily limited to, Sections XI.J, XI.K and IX.J to construct an accessory apartment in a single family dwelling. (Assessor's Map 44, Lot 26C), located in Rural Residence (RRA) Zoning District (Continued from the November 2020 and January 21, 2021 meetings)

Chairman Gambale read the legal notice and re-opened the public hearing.

Attorney Richard Kallman was present representing the Petitioner. In response to the Board review at the last meeting and he provided supplemental documents; letter dated 2.10.2021- email dated 2.11.2021; email from Director of Public Health Colleen Fermon dated 2.10.21; first and second floor plans A-01 A-102; Exterior Elevations A-301 A-302 and A-303.

He proceeded to make his case and reviewed the special permit criteria.

Adam Costa Attorney for the opposition submitted his letter in an email late today. He represented residents Parker, 229 Argilla Rd, Townsend, 237 Argilla, 239 and 198 Argilla Rd. He's late to the game, but he viewed the last meeting. He addressed concerns and encouraged Board members to conduct a site visit. He discussed the pre-existing non-conforming driveway which he asserted the Petitioner has no rights to use. He spoke to concerns if, a special permit was granted with conditions, how future enforcement would take place.

Discussion took place concerning history of the house, it was rebuilt after a fire and the Petitioner has used the driveway for the past 27 years and contributes money for maintenance of the driveway.

The location of a ten foot easement was located for the Petitioner property, to the left of the common driveway, it is overgrown with vegetation and never used by the Petitioner.

Janet Parker Domingo, 235 Argilla Road and Roger Louis, 6 Fox Creek Road spoke in objection.

Roger Louis, 6 Fox Creek Road commented on the previous discussions, regarding accessory apartments providing low income housing and expressed concerns for Attorney Kallman comments on the number of Airbnb's in town.

The Board articulated some of the conditions and criteria by which a special permit can be granted for an accessory apartment.

Bruce Bistran, 229 Argilla Rd spoke to the location of the septic system that uses part of the easement and possible ruling by Title-5 to use it as a right of way.

Keri MacRae, 31 Heartbreak Road spoke to easement on shared driveways and the issue of over use; and questioned the public benefit?

The Board reviewed its position and issue regarding driveway easement, the Petitioner using the driveway for 27 years; title 5 is not within the Board's jurisdiction and the Petitioner must comply with all the Town's bylaws. Further discussion took place regarding the seventeen criteria for accessory apartments. Attorney Kallman acknowledged the Petitioner was aware of the seventeen conditions for accessory apartment, including the provision that if and when he sells the property, he must alert the Building Inspector.

Mr. Fierro led the Board in review of the Special Permit criteria

**MOTION:**

**Mr. Fierro moved the Board find the applicant has met the criteria under section IX.J 2. a and b. Mr. Clocker seconded and the motion passed unanimously with a roll call vote.**

**MOTION:**

**Mr. Fierro moved the Board grant a special permit as requested by the Petitioners from the provisions of the Protective Zoning Bylaw Sections IIB - XI J. and IX.J of the Zoning Bylaw for an accessory apartment no greater than 876 square feet of gross floor area as referenced on the plans titled "Militello Residence 241 Argilla Rd Ipswich MA 01938" dated 2/9/2021. Mr. Planasch seconded, the motion passed unanimously with a roll call vote.**

*Documents and exhibits used by the Appeals Board:* Petition application and associated documentation and photos. Richard M. Kallman letter dated 2.10.2021- email dated 2.11.2021; email from Director of Public Health Colleen Fermon dated 2.10.21; first and second floor plans A-01 A-102; Exterior Elevations A-301 A-302 and A-303. 10:40 P.m.

Chair announced that the ZBA will hold a special meeting held next week on 2.25.2021 for the petitions not heard this evening.

Mr. Fierro made a recommendation for an upcoming petition for 30 Plains Road and suggested the Petitioners look into provisions for disabled veterans. They may be entitled to a "reasonable accommodation" from the provisions of the Ipswich Zoning Bylaw pursuant to the Americans with Disabilities Act and the Federal Fair Housing Amendments Act. Mrs. Theokas said she would look into it.

**MOTION:**

**Chair Gambale moved to continue to the public hearing for 23-25 Jeffreys Neck Road, David and Patti Ganley and Ben and Meg Ganley request two Special Permits and/or Variances pursuant, but not necessarily limited to, Sections XI.J., XI.K, II.B.3. and Table of Dimensional and Density Regulations Footnote 2, to reduce the right side yard setback from the existing dwelling at 25 Jeffreys Neck Road and to reduce the left side yard setback from a proposed dwelling at 23 Jeffreys Neck Road, both from a proposed common division/property line between the dwellings and both by no more than 50% of the required. In addition, Ben and Meg Ganley request a third Special Permit and/or Variance pursuant, but not necessarily limited to, Sections XI.J., XI.K. and Table of Dimensional and Density Regulations Footnote 2 to reduce the front yard setback from a proposed dwelling at 23 Jeffreys Neck Road by no more than 10% of the required. Property located at Assessor's Map 31B, Lots 006 and 006C in the Rural Residential A (RRA) Zoning District to the 2/25/21 meeting, at 7:00 p.m. via Zoom conferencing. Mr. Fierro seconded, the motion passed unanimously with a roll call vote.**

**MOTION:**

**Chair Gambale moved to continue to the public hearing for 66 Labor-In-Vain Road, Miranda M. Updike, Trustee of the Mary P. Weatherall Realty Trust requests a Variance pursuant, but not necessarily limited to, Section VI - Dimensional and Density Regulations for area relief to allow the creation of lot having less than the one acre minimum required per Section VI. Property located at Assessor's Map 43B, Lot 2A in the Rural Residence (RRA) Zoning District to the 2/25/21 meeting, at 7:00 p.m. via Zoom conferencing. Mr. Fierro seconded, the motion passed unanimously with a roll call vote.**

**New Public Hearings:**

**Chair Gambale moved to continue to the public hearing for 7 Riverside Drive, Lawrence J Savarese requests a Special Permit and/or Variance pursuant, but not necessarily limited to Sections, X.I.J, X.I.K., VI.F and Table of Dimensional and Density Regulations Footnote 2 to reduce the left side yard setback for a shed (320 S.F. in area) by no more than 50% of the required setback. Property located at Assessors Map 42B, Lot 044 in the Rural Residential A (RRA) Zoning District to the 2/25/21 meeting, at 7:00 p.m. via Zoom conferencing. Mr. Fierro seconded, the motion passed unanimously with a roll call vote**

**MOTION:**

**Chair Gambale moved to continue to the public hearing for 30 Plains Road, Ronald L Theokas requests a Special Permit and/or Variance pursuant, but not necessarily limited to Sections X.I.J, X.I.K., VI.F and Table of Dimensional and Density Regulations Footnote 2 to reduce the rear and side yard setback for a three season addition by no more than 50% of the required setbacks. Property located at Assessors Map 37D, Lot 27 in the Rural Residential A (RRA) Zoning District to the 2/25/21 meeting, at 7:00 p.m. via Zoom conferencing. Mr. Fierro seconded, the motion passed unanimously with a roll call vote.**

**MOTION:**

**Chair Gambale moved to continue to the public hearing for 134 Argilla Road, Lee Carson requests a Special Permit and/or Variance pursuant, but not necessarily limited to Sections XI.J, XI.K and V. D Table of Use Regulations for a Private Guest House. Property located at Assessors Map 55, Lot 7 in the Rural Residential A (RRA) Zoning District to the 2/25/21**

meeting, at 7:00 p.m. via Zoom conferencing. Mr. Fierro seconded, the motion passed unanimously with a roll call vote.

**Approval of Minutes:**

**MOTION:**

Chair Gambale moved to approve the meeting minutes of January 21 and 28th 2021 with minor edits. Mr. Vlahos seconded, the motion passed unanimously. (*meeting minutes hereby incorporated by reference*) the motion passed unanimously with a roll call vote.

**Adjourn** - It was moved, seconded and unanimously voted to adjourn at 10:50 p.m.

Respectfully submitted,

Marie Rodgers  
Administrative Assistant

The Board approved these minutes on April 29, 2021

Pursuant to the 'Open Meeting Law' the approval of these minutes by the Board constitutes a certification of the date, time and place of the meeting; the members present or absent; the findings made and actions taken. Any other description of statements made by any person, or the summary of the discussion on any matter, is included for the purpose of context only, and no certification, express or implied, is made by the Board as to the completeness or accuracy of such statements.