

# ZONING BOARD OF APPEALS Ipswich, Massachusetts

**March 18, 2021**

Pursuant to a written notice posted by the Town Clerk and published in the Ipswich Local News, a newspaper of general circulation; the Ipswich Zoning Board of Appeals held a meeting on Thursday March 18, 2021 at 7:00 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:** There were none.

## **Continued Public Hearing:**

**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 21, and 28, 2021, February 18, 2021)

Barbara Carboni Special Counsel for the Board was present. Chairman Gambale read the legal ad and re-opened the public hearing at 7:00 p.m.

Attorney John Smolak was present representing the applicant John Bruni, Manager, Essex Pastures, LLC who was present as well. As was Joe Peznola Hancock Engineering and Ed Marchant Finance Advisor.

Chair recognized Attorney Dennis Murphy from Hill Law representing opposition to the project. At the request of the Board he agreed to provide a letter, on his letterhead, with a full list of names he is representing. Attorney Murphy agreed to speak later in the meeting.

Attorney Carboni suggested the Board review every waiver with the applicant and the applicant's team can explain the reason for the waiver.

Mr. Peznola, spoke to materials submitted, interior landscaping and his response to the Fire Chief comments in letter dated 3.4.2021. He review to the sweat path and changes made in the plan dated 1.21.2021.

Chief Andy Theriault was present and said the current plan is acceptable (no date). Fire hydrant locations will be worked out with the fire department, the water department and the applicant.

The Board and Fire Chief discussed placement for nineteen foot our riggers during winter conditions; the roadways are twenty feet wide and there is a dedicated snow storage area on site.

Mr. Peznola read his response to reports submitted in an email from abutter MacRae, 31 Heartbreak Road. Coneco dated 3.25.2011 report; Coneco dated 10.2.2019 citing Mass DEP storm water regulations have been met in and peer review concurred.

Attorney Carboni suggested the Board require the applicant to provide more detail in the request for waivers, for specific regulations and not a general waiver request from the bylaw.

Chair recognized Mary Morrow 55 East Street, Paula Jones 40 Lakemans Lane; Vickie Hughes 2 Poplar St; Helen Weatherall, 44 Fellows Road all voiced their concerns and objections.

Chair requested Attorney Smolak to provide an Extension of time to May 6, 2021. The Board will meet on April 29<sup>th</sup> a deviation from the regular third Thursday, in order to maintain a quorum.

Attorney Smolak replied that he will provide an Extension of Time to March 25, 2021. The applicant feels the Board has received sufficient materials on a review closing in on three years.

Attorney Carboni confirmed the Board would have forty days to make a decision, after the hearing is closed.

Discussion took place concerning the review of waivers and conditions before the hearing is closed, in order to provide opportunity for the Board and the applicant to discuss final conditions.

Attorney Smolak requested time to discuss with his client.

Documents submitted: 3.1.21 March 1, 2021 James McCarthy, 35 Fellows Road, Ipswich; 3.4.21 Fire Chief Email with letter and 7 pages of plans highlighted with concerns; 3.9.21 email from Jody Huffcut, Paul Vihonsky, 320 Linebrook Road; 3.11.21 email from Atty Murphy with attached letter; 3.17.21 email 3.15.2021 from Keri MacRae with 3 attachments report (15pg) from Coneco dated 3.25.2011 report (3pgs) from Coneco dated 10.2.2019; Memo DPW letter head Richard Clarke Director no date; 3.17.21 email from Keri MacRae with 19 pgs. thread Heartbreak/County/ Saltonstall; DPW Beaver deceiver; 100 County Rd; 3.17.21 List of Waivers (32pgs) with waiver numbered; March 17, 2021 email from Joseph D. Peznola, PE, Director of Engineering, Hancock Associates in response to MacRae reports.

**25 Pleasant Street, Elder Friendly Housing, LLC. Karl Mayer** requests a Comprehensive Permit approval, pursuant to MGL Ch. 40B, to construct eight (8) age-restricted for-sale dwelling units of which 25% (2 units) would be subsidized for low to moderate income use. (Map 41B Lot 043) (Continued from August 2018; all of 2019; all of 2020; January, February 2021 meeting)

Chairman Gambale read the legal notice and re-opened the public hearing at 8:31 p.m. Attorney Paul Haverty MHP consultant for the Board was present.

Attorney Paul Ross was present to represent the applicant. He reviewed the recent submittals (hereby incorporated by reference)

In response to town water and waste water Vicki Halmen, Attorney Ross agreed to her recommendation of water sense fixtures and no in ground sprinkler system. With regards to Water Protection Zone he will provide an engineer analysis at the next meeting along with analysis of proposed mitigation and in ground water infiltration or rain gardens.

Discussion took place concerning the Design Review Board review. Attorney Ross said this project is in line with new changes in zoning under Chapter 40A.

Attorney Ross proposed to submit a consolidated package with a new set of waiver request, the Brownville well analysis.

Topic back to Essex Pastures, LLC

Chair requested time out and returned to the Essex Pastures, LLC. Attorney Smolak proposed to meet on March 25, 2021 to discuss waivers. Chair requested an Extension of time to April 1, 2021 and noted time was needed to review conditions. Attorney Smolak said we will see where we are on March 25, 2021.

Process and procedures were discussed, it was noted, after the close of the public hearing, there will be no more input; the Board could propose conditions that render the project uneconomical. Attorney Smolak acknowledged that risk.

Chair recognized Attorney Murphy, who deferred his time to next Thursday's meeting.

Chair moved to continue the public hearing to March 25, 2021 at 7:00 p.m. a special meeting for Essex Rd 40B only Mr. Vlahos seconded, the motion passed with a roll call vote, Mr. Planasch abstained.

**Chair returned to 25 Pleasant Street**, and recognized Kathleen & Ted Spinalie, 27 Pleasant St, Tim Corrigan 16 Pleasant St, Julie & Dan O'Leary, 23 Pleasant St. Cheryl Ferris, 1 Blaisdell Terrace. All expressed concerns objecting to the density impacts, privacy issues, increase traffic and safety issues, light pollution, increase in impervious area, storm water impacts, and potential water pollution within the zone II water protection areas.

The Board requested more information regarding plantings and suggested a consultant to join the next meeting for a more robust and address issues raised. Attorney Ross will find about a consultant for the next meeting.

Attorney Carboni, through ZBA member Rob Clocker, suggested adding the 'time of the meeting' to the motion to continue the Essex Rd hearing.

**MOTION:** Chair moved to continue the public hearing to March 25, 2021 at 7:00 p.m. a special meeting for Essex Rd 40B only. Mr. Vlahos seconded, the motion passed with a roll call vote. Mr. Planasch abstained.

In response to someone asking, Attorney Ross spoke to the poll, currently on site, the flag on the poll shows the building height, it will be adjusted prior to the next meeting.

Paul Haverty, confirmed he will be available at the April 29, 2021 meeting. And will consult with Attorney Ross regarding the waiver list.

**MOTION:**

**Chair Gambale moved to continue to the public hearing to the 4/15/21 meeting, at 7:00 p.m. via Zoom conferencing. Mr. Fierro seconded, the motion passed unanimously with a roll call vote.**

Documents submitted: Letter re: Two Duplex signed by Atty Ross; Building Drawings; Site plan; Landscape design plan.

► **Chairman Announced the request to withdraw for 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.

**MOTION:**

**Chair Gambale moved to withdraw the Petition, the Petitioner will seek out a permit from the Building Inspector to construct a shed in a legal manner. Mr. Vlahos seconded, the motion passed with a roll call vote.**

► **Chairman Announced the continued hearing 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 4/29/21 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.**

► **Chairman Announced the withdrawal request 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.

The Board reviewed the discussion of the proposal at the last meeting. On March 25<sup>th</sup> the applicant went to the Planning Board applied for and received an ANR to divide the lot. There is a question of legality for that process and Town Counsel's opinion will be sought, in case this type of situation comes up again. The Board will vote on the withdrawal at the next month's meeting.

**MOTION:**

Mr. Gambale moved the Board vote not to accept the request to withdraw, and instead administratively continue to the April 29, 2021 meeting. Mr. Vlahos seconded, the motion passed unanimously with a roll call vote. *Documents and exhibits used by the Appeals Board* Requested by Chris J. Thornton, Esq. in an email dated 3.15.2021

**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. (Continued from November 2020 and January 21, 2021)

Chairman Gambale read the legal notice and re-opened the public hearing at 9:48 p.m.

The Petitioners were present and represented by Larry Graham of HL Graham Associates and Attorney Rich Kallman.

Mr. Graham who reviewed his revised submittals along with historic ZBA decisions going back fifteen years, and seven pages of plans. He cited the table of dimensional and density specifically foot note 26 and cited examples, whereby decisions granted applied foot note 26 and footnote 2.

Discussion took place regarding interpretation of the bylaw, previous decisions granted in error, opinion from Glenn Gibbs, former Director of Planning email dated 3.16.2021 foot note 26 was intended to create buildable lots; #25 became non-conforming with the adoption of the bylaws; house was built circa 1865; interpretation for footnote 2 for a pre-existing non-conforming lot, moving the lot line closer to home, rather than move the house closer to the lot line.

At about 10:30 p.m. the Chair announced this would be the last hearing and all petitions after will be continued to the April 29, 2021 meeting at 7:00 pm. Via Zoom and would be formally continued at the end of this hearing.

Discussion continued concerning soil conditions, wetlands determining topography, suggestion to reshape the proposed dwelling and reduce the amount of relief needed on the new lot. Proposed house plans were discussed Mr. Graham the intent to give them opportunity to building within the footprint proposed. Mr. Fierro agreed with Mr. Clocker interpretation for application of foot note 2 on lot 1 and grant relief for setback. He refutes lot 2, because of the language; he doesn't feel that it's irregular and not unusual in shape. The Board suggested providing some type of massing, one or two stories, and how it will sit on the site.

Mr. Graham requested to continue the hearing.

Chair recognized Jennifer Hughes, 117 High Street she questioned building upland and waiver of 70% of lot upland, doesn't meet either requirement. Attorney Kallman cited footnote 26, it's 70% of one acre.

Carolyn Britt 1 Shagbark Woods abutter initiated discussion concerning the percentage of upland noted on the plans. Mr. Graham pointed out upland calculation for each lot, as noted on plans.

Mr. Graham requested to continue to the April 29, 2021 meeting.

**MOTION:**

**Chair Gambale moved to continue to the public hearing to the 4/29/21 meeting, at 7:00 p.m. via Zoom conferencing. Mr. Vlahos seconded, the motion passed unanimously with a roll call vote.**

*Documents and exhibits used by the Appeals Board: email from Glenn Gibbs, former Director of Planning dated 3.16.2021*

**New Public Hearings:**

**178 Argilla Road, Marlin & Allison Shearer** request 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 3), located in Rural Residence (RRA) Zoning District.

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

**Chair Gambale moved to continue to the public hearing to the 4/29/21 meeting, at 7:00 p.m. via Zoom conferencing. Mr. Vlahos seconded, the motion passed unanimously with a roll call vote.**

**123 High Street, Trustees of Currier Park Condominium** request three Variances pursuant to, XI.K but not necessarily limited to, Sections VI.A to allow for the creation of a single family lot at 123 High street containing 9,075, where 10,000 SF is required; to allow the creation of a multi-family lot at 2-4-6 Currier Park containing 8,623 SF, where 19,000 SF is required; and to reduce the left side yard setback to four feet, where ten feet is required. (Assessor's Map 30B Lots 9A, 9B, 9C and 9D) located in the Intown Residential (IR) zoning district.

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

**Chair Gambale moved to continue to the public hearing to the 4/29/21 meeting, at 7:00 p.m. via Zoom conferencing. Mr. Vlahos seconded, the motion passed unanimously with a roll call vote.**

**1 Bowdoin Road, Charles Clapp Esq.** request a Variance and/or Special Permit pursuant, but not necessarily limited to Sections, X.I.J, X.I.K., and VI Table of Dimensional and Density Regulations Footnote 2 to reduce the front yard setback of the principal dwelling for the construction of a second floor, screened in porch. (Assessor's Map 15D, Lot 20A), located in Rural Residence B (RRB) zoning district. Chairman Gambale read the legal ad and opened the public hearing at 7:00 p.m. The Petitioner was present to explain their request

*Documents and exhibits used by the Appeals Board: Petition application and associated documents. Email dated 3.15.2021 in support Scott and Martha Finlay, 2 Bowdoin Rd; Peter Gosselin, Washington DC; John J. Halloran, 10 Bowdoin Rd; Ann Lambertus, 6 and 8 Bowdoin Rd.*

**Chair Gambale moved to continue to the public hearing to the 4/29/21 meeting, at 7:00 p.m. via Zoom conferencing. Mr. Vlahos seconded, the motion passed unanimously with a roll call vote.**

**2 Warner Road, Thomas & Susan Cornacchio** request two Special Permits and/or Variance pursuant, but not necessarily limited to Sections, X.I.J, X.I.K. Also, II B. 2, for relief from the side setback requirement, of no greater than 50% of the required to construct a detached accessory structure greater than 750 square feet (1,708 s.f.) (Assessor's Map 52D Lot 004) located in the Rural Residential A (RRA) Zoning District.

**Chair Gambale moved to continue to the public hearing to the 4/29/21 meeting, at 7:00 p.m. via Zoom conferencing. Mr. Vlahos seconded, the motion passed unanimously with a roll call vote.**

**Approval of Minutes:**

Draft meeting minutes of February 18, and 25<sup>th</sup> 2021 were tabled to the next meeting for review.

**Adjourn** - It was moved, seconded and unanimously voted to adjourn at 11:10 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.