



## ZONING BOARD OF APPEALS

Town of Chelmsford  
50 Billerica Road  
Chelmsford, MA 01824

### MEETING MINUTES

**April 6, 2023**

*(Approved June 1, 2023)*

**TIME:** 7:00 PM

**LOCATION:** Town Offices, 50 Billerica Road, Chelmsford, MA

**ROOM:** 204

**Members Present:** Brian Reidy, Chair  
Charles Wojtas, Vice Chair  
Nancy Morency  
Peter Casserly, Associate Member  
Glenn Diggs, Associate Member

**Members Not Present:** Jamie Outland-Brown  
Steven Mendez  
Erin Drew, Associate Member

**Others Present:** Jose Negrón, Building Commissioner and Zoning Enforcement Officer  
Paul D'Amore, Building Inspector  
Becky DaSilva-Conde, Community Development Departmental Assistant

Chair Reidy called the meeting to order at approximately 7:00 p.m.

**PUBLIC INPUT:** None

**MEETING MINUTES TO APPROVE:** February 2 & 9, and March 2, 2023

**Motion** by Mr. Wojtas to APPROVE meeting minutes with edits as noted for February 2, 2023. Seconded by Ms. Morency. **Motion carries, unanimous, 5-0.**

**Motion** by Mr. Wojtas to APPROVE meeting minutes for February 9, 2023. Seconded by Mr. Casserly. **Motion carries, 4-0-1.** Mr. Diggs abstained.

**Motion** by Ms. Morency to APPROVE meeting minutes for March 2, 2023. Seconded by Mr. Casserly. **Motion carries, 4-0-1.** Mr. Wojtas abstained.

**ADMINISTRATIVE REVIEW:**

- 1) 32 Fifth Lane, Mike Purrington – Requesting a 1-year Variance extension.

**Motion** by Ms. Morency to APPROVE a 1-year variance Extension to 32 Fifth Lane.  
Seconded by Mr. Casserly. **Motion carries, 4-0-1.** Mr. Wojtas abstained.

**2) 150-152 Dalton Road, Fougere Landscaping – Ratify Certificate of Decision document.**

Edits were received from a few Board members and Town Counsel. Ms. DaSilva went over the individual email comments from each:

- Facts #10 – Mr. Mendez requested to change the word “majority” to “some”
- Finding #5 – add in “and verbal” referencing the comments received
- Facts #9 & 10 – Ms. Drew was concerned there is no mention of Town Counsel’s advice to the Board to use the year 2012 vs 1955 as the year of comparison, which was crucial to the Board’s findings with regard to the Powers Test and its final decision and vote. And secondly, there is no mention of the Powers Test within the facts and findings. Ms. DaSilva suggested that she can edit the document to include the Powers Test under “findings” section and list down each of the three criteria and what the Boards vote was. Chair Reidy suggested that this section be added as Fact #11.
- Town Counsel also emailed comments late this afternoon. Ms. DaSilva read out the email to the Board.
  - Fact #5 – Replace “this” in the last sentence with “2012”: “The Board finds that *this is the date...*”
  - Fact #7 – Add the year 2018 to the dates in parentheses.
  - Procedural History section: List all individual affidavits received to this section (The previous owner’s affidavits were received as attachments to the subsequent letter packets received from Attorney Brown during the hearing process, which are listed in the decision document).
  - Edit the wording on the motion made from “to overturn the Building Commissioner’s denial memorandum” to “overturn the opinion that the 1955 variance for a garden shop was required...”

All Board members present agreed to all of the edit suggestions listed above.

**Motion** by Ms. Morency to RATIFY the Certificate of Decision for 150-152 Dalton Road.  
Seconded by Mr. Casserly. **Motion carries, unanimously, 5-0.**

Ms. DaSilva informed the Board she will make the edits to the document tomorrow morning, have it ready for Chair Reidy to sign, and file it with the Town Clerk before the close of business at 1:00 p.m. tomorrow.

**NEW PUBLIC HEARING(S):**

- 1) **11 Old Middlesex Turnpike – Kalpesh and Kinjal Patel** requesting a special permit under Section 195-9 Conformity and/or Section 195-8 Nonconformity for exceeding maximum building coverage, floor area ratio (FAR), and the front setback requirement, and any other relief that may be deemed necessary, to construct two additions to an existing single-family dwelling. This property is located in the RB district – Parcel ID: Map 39, Block 132, Lot 15.

**\*\*\* REQUEST TO CONTINUATION WITHOUT DISCUSSION TO MAY 4, 2023 \*\*\***

**Motion** by Ms. Morency to OPEN and CONTINUE the public hearing for 11 Old Middlesex Turnpike without discussion to May 4, 2023. Seconded by Mr. Casserly.

**Motion carries, unanimous, 5-0.**

- 2) 203 Turnpike Road – Smartlink LLC on behalf of AT&T requesting a modification to a previously approved wireless facility special permit for the removal of 9 antennas and replacement of 12 antennas and other associated related cables and equipment will be removed and replaced onto the existing cellular tower and platform, and any other relief deemed necessary. This property is located in the P district – Parcel ID: Map 106, Block 397, Lot 1.

Christina Robinson represented Smartlink and AT&T for this modification request. The proposal is for a simple swap of equipment on the existing telecommunications tower.

Chair Reidy read the departmental comment letters from Fire and Building Departments. No comments/concerns were received from other departments.

There was no public input.

**Motion** by Ms. Morency to CLOSE the public hearing for 203 Turnpike Road.

Seconded by Mr. Casserly. **Motion carries, unanimous, 5-0.**

**Motion** by Mr. Wojtas APPROVE the special permit modification for 203 Turnpike Road.

Seconded by Mr. Casserly. **Motion carries, unanimous, 5-0.**

- 3) 13 Stearns Street – James and Jeanne Bergeron requesting Variances, under Section 195-8 Nonconforming and/or Section 195-9 Conformity to subdivide the existing nonconforming single-family property into two lots for the purpose of constructing a new single-family dwelling on said newly created lot, which also requires a variance for minimum lot size, setbacks, percentage lot coverage, and floor area ratio. This property is located in the Residential B district – Parcel ID: Map 54, Block 204, Lot 1.

Attorney Phillip Eliopoulos and Katie Enright, P.E., from Howard Stein Hudson, represented the applicants.

Atty. Eliopoulos is representing this case from the perspective of the location of the current structure/dwelling, based on other case law which states that the property can be claimed as “unusable land” created by the current bylaw/setbacks creating a hardship to the lot whereby leaving the back land of the property unusable. In addition, subdividing this particular nonconforming lot will not cause any detriment to the neighborhood due to the fact that the other lots are of similar smaller size. This property is larger than the majority of the other lots in the neighborhood.

Ms. Enright presented the proposed site plan and the neighborhood lot comparison exhibit to the Board. The existing lot is approximately 30,000 sq. ft. located in East Chelmsford, on the other side

of Route 495. The existing lot is a corner lot along three roads, therefore it has three (3) frontages. The subdivided lots will be approximately 15,000 sq. ft. each, which is average and fitting for this neighborhood.

The reason behind the request is due to the property owners' health reasons; the Bergerons would like to build a smaller house in Chelmsford in which they can live in with first floor living. Therefore, the Bergerons would like to live in the proposed house/lot.

The proposed new lot cannot be tied into Town sewer. Ms. Enright has designed a septic system into the site plan to accommodate the proposed new house, contingent upon Board of Health approval.

Member Morency asked Atty. Eliopoulos how does the location of the existing house make the remainder of the property "unusable"? Atty. Eliopoulos stated that the current zoning bylaw makes the land unusable due to current setback requirements. Case law gives the Board the authority to grant a variance to this lot, because if it were not for the current bylaw (lot size requirement) this lot has additional frontage to subdivide and create a new lot.

Chair Reidy asked what precludes the owners from putting in an addition to the current home to accommodate their first-floor living needs. The current lot meets the setback requirements, already has sewer, and this would avoid the Board having to grant an unusual variance which the Board does not typically grant. Atty. Eliopoulos responded that an addition would make the already too large of a house even larger and require more upkeep which the owners want to avoid.

The new home proposal has a 1,800 sq. ft. building envelope. The proposal included a second story which was included in the FAR calculations and is the reason why the proposal asked for a FAR requirement variance. However, the Bergerons do not want a second story on the new home. Ms. Enright confirmed that with a one-story 1,800 sq. ft. home, there is no longer a need to request a variance for FAR. That request can now be removed from the overall proposal request.

Member Diggs expressed concern that approving this proposal would open up the Board to every other lot in Town with similar homes (built with small front setbacks and larger back yards) wanting to subdivide under similar circumstances.

Member Casserly pointed out that 21 Manning is of similar lot size with three frontages.

Member Wojtas stated that he would consider this proposal if the lot were located in the RC district. However, it is in the RB district with no true "hardship" to justify the Board granting a variance.

Chair Reidy read the departmental comment letters from Fire, DPW, and Building Department. No comments were received from Police, Conservation, Water, or BOH.

There was an unknown resident letter written in opposition to the proposal. Atty. Eliopoulos asked that the comments be stricken from the record.

Public Input:

Linda Reagan, 9 Clancy Street – Wanted to confirm that the new home will create a new address on Clancy Street, which it will. There are currently six houses on this street. It's a tiny narrow street, with the houses "zig-zagging"; with frontage on one street, and rear portion on another street. This new proposal will change that characteristic of the neighborhood. Her home is located diagonal to

the rear of this lot, or the new frontage. She is a direct abutter to the proposed new lot. She does have concerns with the proposed clearing of the existing trees which currently provide shade for her house. Ms. Reagan stated that she is not opposed to the Bergerons, but rather the proposal. She believes that approving this proposal will result in other “double-lot” neighbors making similar subdivision requests of this Board.

Michelle Thornton, 8 Clancy Street – She will be a direct side abutter to the new home. She is in favor of the proposal because the current “woods” are not maintained. She and her husband believe this proposal will improve to the neighborhood.

Ms. Enright stated that she can revise the neighborhood lot map to show where the other homes are located within their lots, and I include the square footage of each lot, to give the Board a better understanding if there are other similar lots.

Chair Reidy stated that he would like to consult with Town Counsel on the referred case law and whether this request constitutes a legal hardship to justify a favorable decision. Mr. Wojtas would prefer not to contact Town Counsel and have the Board make their own decision. Ms. Morency would prefer to consult with Town Counsel; the other members all agreed.

**Motion** by Ms. Morency to CONTINUE this public hearing to May 4, 2023, and request Town Counsel provide an opinion on the cited case law. Seconded by Mr. Casserly.

**Motion carries, unanimous, 5-0.**

**CONTINUED PUBLIC HEARING:**

- 1) **42 Woodbine Street – Michael J. Welch, on behalf of Richard & Denise Roberts**, requesting a Special Permit under Section 195-6.1 for the construction of an addition for a Limited Accessory Apartment (LAA), any other relief deemed necessary. This property is located in the Residential B district – Parcel ID: Map 41, Block 140, Lot 51.

**\*\*\* REQUEST FOR CONTINUATION WITHOUT DISCUSSION TO MAY 4, 2023 \*\*\***

**Motion** by Mr. Wojtas to CONTINUE the public hearing to May 4, 2023.

Seconded by Ms. Morency. **Motion carries, unanimous, 5-0.**

- 2) **11 Rainbow Avenue – Sarah and Gary Brown** are requesting a special permit under Section 195-6.1, for a Limited Accessory Apartment (LAA), and a variance(s) for the side setback requirement, the maximum building lot coverage and floor area ratio, any other relief deemed necessary. This property is located in the RB district – Parcel ID: Map 39, Block 163, Lot 15 and is approximately 10,720 square feet (0.25 acres) in size.

**\*\*\* REQUEST FOR CONTINUATION WITHOUT DISCUSSION TO MAY 4, 2023 \*\*\***

**Motion** by Mr. Wojtas to CONTINUE the public hearing to May 4, 2023.

Seconded by Mr. Diggs. **Motion carries, unanimous, 5-0.**

**NEXT MEETING:** May 4, 2023

**ADJOURN**

**Motion** by Ms. Morency to adjourn the meeting at approximately 8:20 p.m.

**Motion carries, unanimous, 5-0.**

*These meeting minutes are respectfully submitted by Becky DaSilva-Conde, Departmental Assistant.,  
Community Development Office.*