



ZONING BOARD OF APPEALS

Town of Chelmsford
50 Billerica Road
Chelmsford, MA 01824

MEETING MINUTES

May 4, 2023

(Approved September 7, 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
Steven Mendez
Peter Casserly, Associate Member
Glenn Diggs, Associate Member

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

Others Present: Jose Negron, 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

ADMINISTRATIVE REVIEW:

1) **73 Dalton Road / Edward B. Bell Estates – 40B Comprehensive Permit**

Requesting modification to said Permit to reduce the number of affordable housing units to one (1) one-bedroom unit. The affordable housing rental rate is to remain at 80%.

Member Wojtas recused himself from this discussion.

Attorney David Plunkett representing the Edward B. Bell Estates Development, LLC. There is a correction to be made to change the proposal to one (1) two-bedroom unit. This request has been conveyed to DHCD (Department of Housing and Community Development) and have submitted a new draft regulatory use agreement to them.

Town Counsel, Attorney Paul Haverty, explained to the Board that this an attempt to bring the property into compliance with the 40B Comprehensive Permit that was used. The building has been constructed and occupied. However, it should not have been occupied because the developer did not obtain occupancy permits when construction was complete nor did they go through the final approval process with DHCD for a 40B project. That process includes executing all of the regulatory documents necessary for the units to count toward the Town's subsidized housing inventory. Furthermore, under Basic 40B Project Affordability Requirements: "Either 25% of rental Units must be priced to be Affordable to Households with total Household Income at 80% of Median Family Income OR 20% of the rental Units must be priced to be Affordable to Households with total Household Income at 50% of Median Family Income." Therefore, by reducing the number of affordable rental units from two to one within a building of five total units, as requested tonight, the housing rental rate must be reduced to 50% versus remaining at 80% as proposed.

Atty. Haverty further explained that the number of affordable housing units and the rental rate are in the housing subsidizing agency's purview not this Board's. Therefore, he would consider this matter an insubstantial change/modification to the previously approved special permit. However, the Board should note in its decision that the rental rate is only approved at 50% the median family income, and that in all other aspects the project comply with the previously approved Comprehensive Permit.

Changing the number of affordable units does not negatively impact the Town's rental inventory because all of the units within a 40B approved project count toward the Town's total inventory.

Atty. Plunkett was unaware of the rental rate requirement difference. He requested that the Board issue an approval and if they get confirmation from DHCD that they need to change the rental rate, then he will return for another administrative review with the Board. Town Counsel advised the Board to grant the modification at 50% area median income and if the applicant gets other approval from DHCD then they may return for another administrative review/minor modification.

There was no public input on this matter.

Town Counsel clarified that there are two inflections to be made tonight. The first is to determine whether the proposal is a minor (insubstantial) or major (substantial) modification to the previously approved 40B Comprehensive Permit, which does not take into consideration the economic impacts of what is being proposed. Town Counsel believes this is an unsubstantial modification because the purview for determining the number of affordable housing units falls with the DHCD, not this Board. If the Board decided that this is a substantial change that falls within the Board's purview, then the Board would need to analyze whether or not the change would make this project less economical. The Board is legally obliged to make its determination within 20-days of the application submittal.

Motion by Morency to ACCEPT/APPROVE the proposed change to 73 Dalton Road 40B Comprehensive Permit from two (2) two-bedroom units to a one (1) two-bedroom unit

as a minor/insubstantial modification of the previously approved 40B Comprehensive Permit, with the following two conditions:

- 1) The one (1) two-bedroom unit must be recalculated at 50% family median income (instead of the previously approved 80% of family median income), unless the Department of Housing and Community Development authorizes the 80% family median income rate remain unchanged, and
- 2) The Applicant must be fully compliant with all other conditions stated in the previously approved 40B Comprehensive Permit.

Motion seconded by Mendez. **Motion carries, unanimous, 5-0.**
(Voting members: Reidy, Morency, Mendez, Casserly and Diggs)

2) **61 Carlisle Street / Thomas Marshall Estates – 40B Comprehensive Permit**

Requesting modification to said Permit to reduce the number of affordable housing units to one (1) two-bedroom unit. The affordable housing rental rate is to remain at 80%.

Member Wojtas recused himself from this discussion.

Attorney David Plunkett stated that the request is identical to that of 73 Dalton Road.

There was no public input or further discussion on this matter.

Motion by Ms. Morency to ACCEPT/APPROVE the proposed change to 61 Carlisle Street 40B Comprehensive Permit from two (2) two-bedroom units to a one (1) two-bedroom unit as a minor/insubstantial modification of the previously approved 40B Comprehensive Permit, with the following two conditions:

- 1) The one (1) two-bedroom unit be recalculated at 50% family median income (instead of the previously approved 80% of family median income), unless the Department of Housing and Community Development authorizes the 80% family median income rate remain unchanged, and
- 2) The Applicant must be fully compliant with all other conditions stated in the previously approved 40B Comprehensive Permit.

Motion seconded by Mr. Casserly. **Motion carries, unanimous, 5-0.**
(Voting members: Reidy, Morency, Mendez, Casserly and Diggs)

NEW PUBLIC HEARING(S):

- 1) **36 Bartlett Street – William L. Harvey III** requesting a Special Permit, under Section 195-5 Use Regulations A.4 in accordance with Section 195-13 Conversion of Dwelling Units, to convert a single-family dwelling existing prior to 1938 into a two-family dwelling, and other relief deemed necessary. This property is located in the RB district – Parcel ID: Map 84, Block 348, Lot 7.

Member Wojtas recused himself from this public hearing.

Attorney David Plunkett represented owner William L. Harvey.

Section 195-13 permits the requested conversion as long as the long meets property meets four criteria:

1. The dwelling existed prior to 1938 when the Town first adopted zoning;
2. The lot contains a minimum of 15,00 square feet of land;
3. The exterior design of the structure is not changed from the character of a single-family dwelling; and
4. At least 600 square feet of living space shall be provided for each resulting dwelling unit.

The applicant meets the criteria as follows:

1. The existing dwelling was in existence since 1903.
2. The lot contains 68,382 square feet of land, or 1.57 acres.
3. The exterior design will not be changed in any way. The current home consists of two (2) main egresses for each dwelling until.
4. The applicant has provided the Board with floor plans containing measurements of each unit, evidencing that each unit meets the minimum requirement of 600 sq. ft. of living space; unit A will have 1.984 sq.ft. and unit B will have 910 sq. ft. of living space.

Chair Reidy asked if the applicant had stamped plans indicating the layout and square footage of the two resulting units. Atty. Plunkett pointed out that the packet includes a break down of each units living space. The existing home is large and there second unit will be 910 sq.ft.

Member Diggs asked if there is any concern regarding the sewer moratorium and the conversion of this dwelling. DPW's comment letter states that there is only one sewer connection, therefore the homeowner needs to agree that both units will share the one connection.

Chair Reidy read the departmental comment letters into the record from DPW, Fire Prevention, Water, and the Building denial letter. BOH and Police had no comment.

Water District wants the applicant to sign an agreement with them prior to the Board's approval process. The Chair questioned whether this is necessary because this proposal is not for new construction. However, since the Water District made the request, he will honor it.

Atty. Plunkett expressed concern with delaying the approval due to the CWD's request when nothing is going to change with the existing dwelling. He does not believe their request is part of the bylaw requirements for eligibility before this Board. Nonetheless, his client will meet with them and sign whatever agreement is needed. However, Atty. Plunkett did not feel that this Board needs to wait for that to grant approval tonight.

Public Input:

Thomas Hill of 39 Bartlett Street – Opposes this special permit request because he wants to preserve this single-family dwelling historical neighborhood. He spoke with his neighbors and many also felt the same. He has produced a petition to the Board's office prior to the meeting. His/others concerns are related to several issues. One is the parking. Mr. Harvey has already been renting out an apartment on the back side of the house. She often parked on the street because Mr. Harvey would park his business vehicle in the driveway. He has also cut down several trees. Mr. Hill is concerned that Mr. Harvey may cut down more of the mature trees on the property and

create a large parking lot to accommodate the future tenants in both units. He is also concerned that Mr. Harvey may not have ever had any intention of living at 36 Bartlett Street, but rather purchased it to subdivide the land and tie it into his abutting property into Boston Road and potential build a new subdivision. Lastly, there are 34 single-family homes on this street, of which 17 were built before 1938. Mr. Hill is very concerned that approving this permit may set a precedent for other future homeowners wanting to convert their homes as well, which would significantly change the overall character and landscape of this neighborhood. Such as more cars per home, potentially parking on the roadside also resulting in less trees and landscaped areas to accommodate the vehicles, thereby increasing the more asphalted areas too. Bartlett Street is a very unique road; is one of the oldest streets in town, is not a through street, and is visually reminiscent of years past.

Deborah Hill of 39 Bartlett Street – Read a letter from Marlene Pellegrini of 29 Bartlett Street who also opposes this conversion request. Ms. Pellegrini could not attend the meeting this evening. She expressed the same concerns as Mr. Hill. She also expressed concern for the uniqueness of this historical road located within walking distance to Town Center, and how conversions will change the character and landscape of the neighborhood. Ms. Hill also expressed her opposition to this special permit.

Sarah Gavriel Sullivan who resides at 43 Bartlett Street read a letter of opposition from her parents, Nicolas and Elizabeth, who own the home. They do not believe that multi-family homes are appropriate for this historical neighborhood. Ms. Sullivan also expressed concerns for her and other children’s safety with traffic flow and patterns potentially changing on this quiet residential street.

Vera Lee-Chin of 68 Bartlett Street also wants to preserve the historical character and landscape of this unique street. She asks the Board to keep the integrity of their street. The residents want to keep and preserve the street as it is now; single-family homes.

David Hutchinson of 42 Bartlett Street is a direct abutter is also in opposition of this special permit. He moved into the neighborhood years ago because it was a single-family neighborhood. He has concerns for what other changes this conversion could bring to their neighborhood.

Simon Long of 37 Bartlett Street lives directly across the street from the applicant. A lot of his concerns have already been expressed by his neighbors; changing the character and landscape of the neighborhood and potential connecting to a future subdivision on land Mr. Harvey owns on Boston Road. The impacts will also impact other residents in Town who enjoy the character and charm of this historical road.

Carrie Ives of 27 Bartlett Street is also in opposition to the applicant’s request for all the same reasons already expressed by her neighbors.

John O’Keefe of 57 Bartlett Street is also in opposition to the applicant’s request for all the same reasons already expressed by her neighbors.

Bryan Bestvater of 54 Boston Road lives directly across the road from 47 Boston Road which has been purchased by Mr. Harvey in 2019. That property was stripped but not developed. He and his wife also oppose the special permit request because he believes it could create a slippery slop as mentioned by the Bartlett Street residents, particularly because it abuts 47 Boston Road.

Ken Galica of 61 Bartlett Street also opposes this special permit request. Believes that additional street parking and car traffic could pose a hazard to people walking and driving on this street. He wanted to point out to the Board that Mr. Harvey will not be prejudiced if the Board denies this special permit request, because when he purchased the property he did so knowing it was a single-family dwelling. Mr. Galica also expressed concern that Mr. Harvey's plan may be to subdivide this land and connect it to a future subdivision on Boston Road. The neighbors both on Bartlett Street and Boston Road want the neighborhood to remain as a single-family neighborhood.

Mark Dupell of 63 Bartlett Street requested that the Chair ask Mr. Harvey's attorney if he plans to get a building permit for this second unit conversion.

Mr. Plunkett stated that his client will do whatever is required by the Town, just as their special permit request is allowed by the Town's Zoning Bylaw.

Ms. DaSilva stated that Mr. Harvey sent her an additional photo exhibit for tonight's meeting but did not explain why, whether the photos are from an existing kitchen, either primary or secondary/accessory. Mr. Plunkett was unaware of the photos but stated that the house was built in early 1900s therefore the kitchen has been in existence for a long time as evidenced from the photos.

Mr. Dupell brought up his question because several neighbors have made reference to a separate rental apartment already existing in this home. He requested that if the Board grants conversion approval, that the Board require that the secondary apartment be brought to code with all necessary permits, including the requirement of fire wall separation. He requests that this be part of the record.

Paula Flammia of 48 Bartlett with like to speak in support of everything her neighbors have said tonight. She too is opposed to this special permit request. She questioned whether or not Mr. Harvey was allowed to already rent out an accessory apartment within the house. Her concern is that he may have already been renting out an apartment without prior approval/permit. Chair Reidy expressed that this concern is not within the Board's purview, but she may speak with the Building Commissioner regarding her concern during business hours.

Julie and Glenn Ackley of 84 Bartlett Street. Mrs. Ackley purchased her childhood home in 1989 because she enjoyed the neighborhood so much. She opposes the request for conversion for all of the same reasons already stated, and hopes the Board takes their concerns into consideration.

Atty. Plunkett reminded the Board that the granting of special permit is not based on the applicant's personality. The Board needs to base its decision on whether his client meets the conversion criteria as set forth in the Bylaw. Everyone in Town has the same rights. His client meets the criteria for conversion. Therefore, he requests the Board's approval.

Deborah Hill spoke again to state that her opposition has nothing to do with who is requesting this change/conversion but rather due to the behavior they have observed, such as the poor parking situation. In order to remedy that, will they be changing the landscape to accommodate tenant parking, which will change the landscape of the neighborhood.

The Board agreed to continue the public hearing in order to hear back from the Water District and ensure their concerns have been met.

Town Counsel pointed out that Section 195-13 Conversion of Dwelling Units lists out the byright requirements of conversion as well as special permit requirements. The Board also has to consider the Special Permit criteria under Section 195-103. This section is also applicable to this special permit and both the Board and the applicant need to review that section because this section is the standard by which any special permit decision granted is judged. The Board's decision needs to be based upon these factors.

Motion by Ms. Morency to CONTINUE the public hearing for 36 Bartlett Street to June 1, 2023. Seconded by Mr. Mendez. **Motion carries, 5-0.**
(Voting members: Reidy, Morency, Mendez, Casserly and Diggs)

- 2) **3 Summit Avenue – Robert & Christen Fragala** requesting a Variance, under Section 195-11 Accessory Buildings/Structures, and any other relief deemed necessary, to install an inground swimming pool located within the front yard area. The property is a corner lot with two frontages and is located in the RB district as Assessors Parcel ID: Map 101, Block 357, Lot 9.

The Fragalas returned to the Board to formally request a variance request after having an informal discussion and straw-poll with the Board in March. They live on a corner lot, having two frontages, and are requesting to install an inground pool on the Robin Hill Road side of their lot, which functionally speaking is their backyard due to their house having a sideways orientation on the lot. They presented photos of their property from all directions. Their front door faces the left side of the lot toward their neighbors two lots. The Fragalas had requested an informal straw poll from the Board which was favorable.

Although no plan changes were requested by the Board during the discussion in March, the Fragalas made a few minor changes to the plan that resulted in extra distance from the lot line. The hot tub was moved to the end of the pool instead of the side of the pool, resulting in more distance from the lot line. The pool size was reduced from 20'x40' to 18'x36' resulting in the pool structure distance from the lot line being increased from 15-feet to 18-feet. There will be a large fence surrounding the pool to obstruct the view of the pool from the roadways; 6-feet tall along Robin Hill Road, and 8-feet tall along Summit Ave.

Chair Reidy read the departmental review letters into the record. DPW comments noted that the pool will be located in close proximity to the septic tank onsite. The Fragalas confirmed that they are on Town sewer and are aware that the septic tank remains onsite, and it will be removed as part of the pool installation.

Member Wojtas had concerns regarding the issuance of a variance for a pool. He was not in attendance at the March meeting when the Board had their initial discussion and deliberation. Chair Reidy pointed out the addresses that the Fragalas presented as previous variances for pools in corner lot frontages (182 Dalton Road, 21 Sylvan Ave and 8 Lady Slipper Lane) and numerous others in Town. The other members expressed that they had no concerns with this proposal.

The Board concluded at the meeting in March and confirmed again today that the legal hardships to warrant a variance are: unique shaped lot, topography and soils (bedrock), and a water well on the side yard which functions as their front yard (well is currently in use).

Motion by Ms. Morency to CLOSE the public hearing for 3 Summit Avenue.
Seconded by Mr. Casserly. **Motion carries, 5-0.**

Motion by Ms. Morency to APPROVE the variance for 3 Summit Avenue, as discussed and presented. Seconded by Mr. Casserly. **Motion carries, 4-1.** Mr. Wojtas opposed.

- 3) **6 Doral Drive – Jayesh & Purvi Master** requesting a Special Permit, under Section 195-8 Nonconformity and/or 195-9 (B) Conformity for 20% reduction to the front setback requirement to build a 28x28 ft. attached two-story garage and 4x10 ft. two-story entryway addition, and any other relief deemed necessary. This property is located in the RB district – Parcel ID: Map 29, Block 104, Lot 7.

Kenneth Lania, Project Manager of Cornerstone Land Associates LLC, represented the applicants. The house currently sits at 38-feet off of the front lot line, which makes the dwelling nonconforming. The proposed garage and entryway will be situated at 34-feet from the front lot line.

They have also filed a Notice of Intent with the Conservation Commission for being located within buffer zone of bordering vegetated wetland and the riparian zone of a stream.

Note: A revised stamped engineered plan has been submitted to the Board to reflect the existing and proposed dimensional setbacks.

Chair Reidy read departmental comments from the Building Department, DPW and Fire.

No public input was received.

Motion by Wojtas to CLOSE the public hearing for 6 Doral Drive.
Seconded by Morency. **Motion carries, 5-0.**

Motion by Wojtas to APPROVE the special permit for 6 Doral Drive, as presented and discussed. Seconded by Mendez. **Motion carries, 5-0.**

CONTINUED PUBLIC HEARING:

- 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.

The public hearing was opened last month with no testimony due to the Board receiving a request for continuation to today from the applicant's representative, attorney Peter Nicosia.

Atty. Peter Nicosia represented the applicant today with Brian Dunn, who is the engineer that designed the proposed plan.

Atty. Nicosia has received a supplemental letter indicating that not only was a special permit required, but also a modification to a previously granted special permit that allowed the

construction of the existing farmers porch. He is requesting that the Board hear the presentation tonight (the meeting opened last month, but he nor Mr. Dunn were able to attend) and also make a motion to modify the previous special permit if necessary versus requiring a separate public hearing and legal notice.

Mr. Dunn briefed the Board on the proposal. He submitted a color-coded plot plan that depicted the existing home, from the proposed demo, and the proposed two additions. The plan includes a table with the existing dimensional requirements and the proposed (including FAR and percental lot coverage).

The cul-de-sac shown on the plot plan is not constructed, but was part of the lot creation to give it the necessary frontage.

Chair Reidy read the departmental letters into the record from Building Department, DPW, and Fire.

Town Counsel clarified that the legal notice published is sufficient to modify the previous special permit which was issued for the farmers porch addition, not the original dwelling.

The existing square footage is 6,728 gross (finished basement, attic, utility room, deck, etc.), and the net total is 2,700 square attic. The additions will increase it to 7,110 net square feet. The plan can be revised to move the swimming pool more than 10-feet. The existing driveway from the street is about 120-feet long.

Member Mendez asked if there is a threshold to how much the FAR can increase. Town Counsel stated that there is no limit to increasing the FAR if the property is already nonconforming. Mendez stated that he would like to know what the neighborhood looks like, to ensure it's in keeping with the character of the neighborhood. The two abutting homes are cape-style.

Motion by Mendez CLOSE the public hearing for 11 Old Middlesex Turnpike.
Seconded by Casserly. **Motion carries, unanimous, 5-0.**

Motion by Mendez APPROVE the special permit for 11 Old Middlesex Turnpike.
Seconded by Wojtas. **Motion carries, unanimous, 5-0.**

- 2) **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.

***** REQUEST FOR CONTINUATION WITHOUT DISCUSSION TO JUNE 1, 2023 *****

Motion by Wojtas CONTINUE the public hearing without discussion to June 1, 2023.
Seconded by Casserly. **Motion carries, unanimous, 5-0.**

Town Counsel suggested that the Board get an extension to act letter from the representing attorney.

- 3) 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 JUNE 1, 2023 *****

Motion by Mendez to CONTINUE the public hearing without discussion to June 1, 2023. Seconded by Morency. **Motion carries, unanimous, 5-0.**

- 4) 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 JUNE 1, 2023 *****

Attorney Hausler submitted an email requesting another meeting continuation to June 1, 2023, and that a formal letter granting another extension of time to act would follow. The Board has not received the letter. The current extension of time to act expires on May 31, 2023.

Town Counsel expressed concern that if Atty. Hausler does not submit a timely extension to act to the Board, then the current extension expires prior to the Board's next meeting. Therefore, the Board would not be able to resume the hearing on June 1st as requested. The Board would need to hold a special meeting before then to hear or further continue the hearing.

Chair Reidy called Atty. Hausler and left a voice message to request a written extension tonight.

Board members agreed to meet on May 18th in order to reopen the public hearing to continue it again with the time to act extension.

Motion by Morency to CONTINUE the public hearing without discussion to May 18, 2023. Seconded by Casserly. **Motion carries, unanimous, 5-0.**

Motion by Mendez to REOPEN the public hearing. Seconded by Casserly. **Motion carries, unanimous, 5-0.**

Chair Reidy received a text message from Atty. Hausler giving the Board permission to extend the time to act deadline beyond May 31, 2023. He will send a formal letter tomorrow.

Motion by Morency to CANCEL the continuation previously scheduled for May 18, 2023 and reschedule CONTINUATION to June 1, 2023. Seconded by Casserly.

Motion carries, unanimous, 5-0.

NEW BUSINESS / DISCUSSION ITEMS:

- Town Meeting debriefing on Articles 19 & 20

Article 19 passed, but Article 20 did not. Unfortunately, the Town Meeting discussion regarding Article 20 became about conversions of one-family to two-family dwellings, which was irrelevant to the proposal. The vote came short of the two thirds majority needed to pass it.

Regarding Article 19, there was concern that the article could allow the creation of new nonconformities. Town Counsel explained that if a nonconformity already exists it may be increased. But if a property is conforming you cannot create a nonconformity.

Ms. DaSilva questioned how this differs from the special permit the Board just issued to 11 Old Middlesex Turnpike. The Board then realized that they had just issued a special permit to 11 Old Middlesex Turnpike when in fact it should have been an application for a variance. The proposal creates a new FAR and percentage lot coverage nonconformity. The Board members and Town Counsel misunderstood the dimensional chart provided, where the “provided” numbers were actually the “project proposal.” The only existing nonconformity is the lot size, which is slightly under 40,000 and the frontage which was a nonconformity created in 2017 to allow the addition of a farmers porch with a special permit allowing 20% dimensional reduction.

Town Counsel suggested that Ms. DaSilva reach out to the applicant’s attorney to inform them that they will need to return to request a variance. The Board discussed how hypothetically such variances are not typically issued due to lack of a legal zoning hardship. The special permit may be challenged/appealed by abutters, or the Building Commissioner, up to six years after the fact.

If a property has existing nonconformities relative to FAR or percentage lot coverage then it can be issued a special permit under Article 19, however a conforming property cannot exceed the maximum thresholds.

- Town Counsel discussion: Limited Accessory Apartments versus house additions

The Building Commissioner expressed concern that some applicants are side stepping the 750 sq.ft. maximum allowed for an LAA, by applying for an addition. Mr. Negron explained that the LAA is not solely based on having a full kitchen. There is no bylaw that denies homeowners a second kitchen. It really is about the addition configuration; not directly attached to the main house (having a common area; breezeway) or separate living quarters (privacy).

Town Counsel does not believe the Earnie Bach, Jr. court case is relative to allowing or denying an addition based on a second kitchen, as Chair Reidy thought. The case was based on a specific Edgartown, Martha’s Vineyard local bylaw, which did not allow multiple kitchens. He believes that the prohibition against two kitchens is still valid. However, there is no specific bylaw, or general law, that denies a second kitchen.

Mr. Negron explained that if the living quarters are separated from the main house and it appears to be a LAA, then he has nothing else to base his denial on, if not the separate kitchen and the separate living quarters.

Member Diggs shared his LAA research for the surrounding Town's with the Board. The documents he found will be uploaded to the Board's next agenda for sharing and review. The definitions and requirements vary greatly from town to town. In fact, Westford has the most flexible requirements because they realized that they could not enforce their previous requirements. Furthermore, they did so to keep residents able to remain in the Town versus being pushed out due to financial hardships. Billerica points out in their bylaw that the state Board of Health requires a minimum of 350 sq.ft. of living space per person. Member Diggs suggested that the Board revise their own requirements as well, and perhaps draft changes for Fall Town Meeting.

Mr. Negron pointed out the Section 195-6.1 is also unclear with regard to renting an LAA; one subsection states that the LAA cannot be converted into a rental property, whereas a separate subsection states that the LAA can only be rented to extended family.

Chair Reidy asked Mr. Negron to collaborate with Evan Belansky to draft a new version of the LAA bylaw, which specifies requirements that clearly decipher a LAA from a by right home addition, to present to the Planning Board for Fall Town Meeting. Although he is not sure how to define the LAA so that it is measurable and enforceable.

MEETING MINUTES TO APPROVE: April 6, 2023

Motion by Wojtas to POSTPONE meeting minutes approval to June 1, 2023.
Seconded by Mendez. **Motion carries, unanimous, 5-0.**

NEXT MEETING: June 1, 2023

EXECUTIVE SESSION:

Motion by Mendez for the Board to enter into Executive Session at 10:20 p.m. for the purpose of discussing pending litigation and potential settlement relating to the properties located at 24, 26, 28, and 30 Second Lane, with no intention of returning to Public Meeting except to adjourn. Seconded by Mr. Casserly.

Roll call: Steven Mendez, Glenn Diggs, Peter Casserly, Charles Wojtas, and Brian Reidy. Morency recused herself. **Motion carries, unanimous, 5-0-1.**

ADJOURN

Motion by Mendez to adjourn the meeting at approximately 10:32 p.m.
Motion carries, unanimous, 5-0.

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