



# City Of Attleboro, Massachusetts

**ZONING BOARD OF APPEALS**  
GOVERNMENT CENTER, 77 PARK STREET  
ATTLEBORO, MASSACHUSETTS 02703  
TEL 508.223.2222 FAX 508.222.3046

## MINUTES

**JANUARY 12, 2023**

In accordance with the provisions of the General Laws of Massachusetts, Chapter 40A, as amended, public hearings were held on Thursday, January 12, 2023 at 6:30 p.m. in the Municipal Council Chambers located at Government Center, 77 Park Street, Attleboro, MA 02703, relative to the following:

Zoning Board Members Present: Acting Chairman Kent Richards, Kathy Rautenstrauch, and Sandra Varrieur

Members Absent: Chairwoman Cathy Merkle and Johnny Bender

The Board heard the continued public hearing for Case #5650, the application of Canna-Farm LLC for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-10.15 MARIJUANA BUSINESS USES to establish a marijuana business (cultivation and manufacturing), the subject premises being located at 1 Turner Street, more specifically Assessor's plat #1, lot #12, located in the Industrial zoning district .

The Board read the email from attorney Daniel Glissman of Prince Lobel Tye, LLP, dated January 12, 2023, to Senior Land Use Planner Stephanie Davies asked the Board to continue the public hearing to February 9, 2023 relative to the special permit application of Canna-Farm, LLC for property located 1 Turner Street, Case #5650.

Ms. Davies noted that the applicant is in the process of scheduling a meeting with the Police Chief to discuss their security plan.

There being no one else to speak, the public hearing was continued.

The Board heard the continued public hearing for Case #5651, the application of 42 County Street LLC for special permit pursuant to §17-9.0 SPECIAL PERMITS from the provisions of §17-5.9(F) GENERAL PARKING AND LOADING SPACE STANDARDS to reduce the required minimum number of off-street parking stalls, §17-9.0 SPECIAL PERMITS under §17-5.1 OFF-STREET PARKING REQUIREMENTS to reduce the required dimensions of off-street parking stalls, §17-9.0 SPECIAL PERMITS under §17-5.6(A) LOCATION OF PARKING AND LOADING SPACES to allow the use of off-site private parking stalls located within three hundred (300') feet of the principal lot, §17-9.0 SPECIAL PERMITS under §17-5.7 MUNICIPAL PARKING LOTS to allow the use of off-site municipal parking facilities located within one thousand (1,000') feet of the principal lot, §17-9.0 SPECIAL PERMITS under §17-12.0 FLOOD PLAIN DISTRICT to accommodate work/excavation within the 100-year floodplain and floodway, as well as for variances pursuant to §17-8.9 VARIANCES from the minimum lot area, from the maximum building height, and from the minimum side yard setback requirements pursuant to §17-4.9 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS in association with the construction of a nine story, 80-unit mixed residential/business use; the subject premises being located at 42 County Street, more specifically Assessor's plat #31, lot #243, located in the Central Business zoning district .

Speaking in favor of the application was attorney Jack Jacobi of Coogan Smith, LLP who stated that his client is still working to produce the elevation views and shadow analysis requested by the Board and Planning Director.

The Board read the letter from attorney Jack Jacobi of Coogan Smith, LLP, dated January 11, 2023, asking the Board to continue the public hearing to February 9, 2023 relative to the special permit and variance application of 42 County Street, LLC for property 42 County Street, Case #5651.

Speaking neither for nor against was Rachel Killion of 50 Maple Street who expressed concerns about the requested variance to construct a building over six stories in height. She stated that she is concerned with the precedent that may set for future development. She also inquired about a shadow analysis.

The Board replied that they requested one at the last meeting and that the applicant is in the midst of preparing one.

There being no one else to speak, the public hearing was continued.

**The Board heard the continued public hearing for Case #5646, the application of Laurel Knoll Land Trust for a special permit pursuant to §17-9.0 SPECIAL PERMITS and §17-10.2 EARTH REMOVAL for an earth removal operation associated with a proposed two-lot definitive subdivision plan entitled "LAUREL KNOLL", the subject premises being located at 0 MacDonald Lane, more specifically Assessor's plat #101, lot #9, located in the Single Residence -D zoning district .**

Speaking in favor of the application was attorney Edward Casey of Coogan Smith, LLP who requested a continuance to February 9, 2023.

There being no one else to speak, the public hearing was continued.

**The Board heard the continued public hearing for Case #5639, the application of Abram Agayby for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-16.9 TABLE OF PERMITTED SIGNS & DIMENSIONAL REGULATIONS to accommodate an electronic message center on an existing sign, the subject premises being located at 289 County Street, more specifically Assessor's plat #44, lot #594, located in the General Business zoning district and Single Residence -A zoning district .**

The Board read the email from Abram Agayby, received January 9, 2023, to Senior Land Use Planner Stephanie Davies asking the Board to continue the public hearing relative to his special permit application for property located at 289 County Street, Case #5639.

Ms. Davies noted that the applicant is still working to install the lenses to address the colors of the electronic message board.

There being no one else to speak, the public hearing was continued.

**The Board heard the continued public hearing for Case #5621, application of Thomas O. Castro for a special permit pursuant §17-12.0 FLOOD PLAIN DISTRICT to work/excavate within the 100-year floodplain to construct of a one-family dwelling, the subject premises being located at Thacher Street and Cypress Road, more specifically Assessor's plat #36, lot #462, #466, and #475, located in the Single Residence-B zoning district .**

Attorney Edward Casey spoke in favor and reminded the Board that the application involves a proposed single-family home to be constructed in the floodplain and that the latest version of the site plan allows floodwater to pass underneath the proposed house by way of flood vents. He stated that the cut and fill data requested by Planning staff had been submitted. He stated that sections of the property will be filled to create upland for the house foundation and a driveway. He stated that compensatory storage for flooding is being provided behind the proposed house. He stated that in the event of a serious flood, the presence of the house would not cause increase flooding downstream. He stated that the 100-year flood elevation is demarcated at 111.1 feet and that the house will be above that elevation. He stated that the roadway is located at elevation

110, so in the event of a 100-year storm, there is the potential for there to be 6 to 8-inches of water on the roadway.

Speaking in favor was Bryan Weiner of Dunn-McKenzie who stated that he had revised the floodplain analysis to include the volume of floodplain capacity the foundation wall for the house would occupy and updated the cut and fill data. He stated that the analysis starts at elevation 109 to show that sufficient storage is being created. He stated that they are proposing a cut of 2,940 cubic feet and a fill of 1,606 cubic feet, providing a net cut of material. He stated that the majority of the fill is located at the driveway and in the yard.

Attorney Casey pointed out the color-coded portion of the plan denoting cuts and fills.

Director of Planning and Development Gary Ayrassian asked if someone were standing in front of the house, how high would the flood waters be in relation to the front door in a storm event.

Mr. Weiner replied that vertically, they would be about 3-feet away.

Mr. Ayrassian asked the distance horizontally.

Attorney Casey clarified the question as how much of the front yard could be traversed on foot without getting wet.

Mr. Weiner replied that the flood waters would go right up to the house.

Attorney Casey pointed out that some uplands are still being provided, so the resident would be able to exit the property without getting wet in a flood. He stated his belief that they have satisfied the standards to be granted a floodplain special permit. He noted that they hold an Order of Conditions from the Conservation Commission that would have to be amended to reflect the updated design presented to the Board this evening. He stated that the resident would be able to walk down the driveway to their car and depart the site in a flood event, so it will be a safe situation.

There being no one else to speak, the public hearing was closed.

**The Board heard Case #5653, the application of Luis Oliveira for a variance pursuant to §17-8.9 VARIANCES from the minimum front yard setback requirement under §17-4.9 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS to construct a two-stall garage onto an existing one-family dwelling, the subject premises being located at 111 Juniper Avenue, more specifically Assessor's plat #166, lot #1M, located in the Single Residence-C zoning district.**

Speaking in favor of the application was Ricki Oliveira of 111 Juniper Avenue who stated that they are seeking a 10-foot variance from the front yard setback for a garage addition. She stated that their home abuts a cul-de-sac and thus, has two front yard setbacks, creating an awkwardly shaped lot. She stated that when they did their initial measurements and sought a foundation permit, they thought they met the 30-foot setback and were unaware that what they considered a portion of their yard was actually part of the roadway layout. She stated that after the foundation was installed, the Building Inspector noticed the discrepancy and directed them to seek a variance. She stated that it was an honest mistake and not done intentionally. She noted that in this application, they are seeking a variance of two-feet less as compared to the variance application that they recently filed and withdrew. She noted that construction of the addition is well underway, as they had contractors lined up to perform the work before they realized that they needed the variance and the Building Inspector indicated that the work could proceed at their own risk. She noted that an original variance application was filed with the Board on September 20, 2022, but that the Board requested it be withdrawn as the Building Inspector was listed as the petitioner. She stated that the application currently before the Board lists the homeowners as the petitioner.

Mr. Ayrassian sought to confirm that compared to the original application, this one seeks lesser relief.

Mrs. Oliveira answered yes, and stated that they are requesting a 10-foot variance in this application versus a request for a 12-foot variance in the September 20<sup>th</sup> application.

Mr. Ayrassian sought to confirm that the dimensions of the addition are the same for both applications, but the extent of the variance request has changed.

Mrs. Oliveira answered yes. She questioned a comment contained in the staff report indicating that the measurements that she and her husband provided in the application did not appear to be accurate.

Ms. Davies stated that without an as-built showing the location of what has been constructed, she utilized the city's GIS system and aerial photography to examine the site plan.

Mrs. Oliveira stated that she could submit an as-built. She stated that the staff report called-out an existing fence that is within the right-of-way and explained that they have lived at their home for 10 years and assumed they owned right up to the street. She stated that they intend to address the fence's location as time and weather permits. She noted that they have a pool, so will need to coordinate with Building Inspections to ensure code is met during that process. She argued that the justification for the relief sought is the lots odd configuration. She stated that the addition consists of a mudroom, a two-car garage, and a master bedroom and bath above. She stated that she intends to convert their existing master bedroom into a laundry room. She stated that the house will continue to have only three bedrooms. She stated that they originally bought the house as a starter home and always had the intent to construct a garage and master suite.

Kent Richards called out the order in which the events occurred, as the applicants planned the addition, applied for a variance with the Board, and then withdrew the variance application. He stated that after withdrawing the application, they then pulled a building permit using the same plans from the original variance application that showed the relief that they were going to request but did not return to the Board with a variance application until now, when construction is well underway.

Mrs. Oliveira admitted that the foundation had already been poured before obtaining a foundation permit, but that Building Inspections ultimately issued one after the fact based on the information she provided to them.

Mr. Ayrassian acknowledged that the property is encumbered by two front yard setbacks. He pointed out that the mudroom however is nearly half of the size of the addition, forcing the two-car garage to extend further into the setback. He asserted that the size of the addition is a matter of preference and that by designing such a large addition, the applicant has created their own hardship. He noted that the addition is nearly as large as the existing dwelling. He stated that had the applicants followed through with appearing before the Zoning Board for a variance before pouring the foundation and continuing construction, the Board might have required the mud room be eliminated from the design to reduce the extent of the variance. He stated that the Board must weigh the constraints of the setback requirements, but that by appearing after the construction has already occurred, when there is no opportunity to negotiate or adjust the plans to minimize the setback intrusion, the applicant has put the Board in a terrible position.

Mrs. Oliveira stated that they designed the addition by maximizing the space they thought they had within the setbacks and that the incursion was not intentional.

Speaking neither for nor against the application was Building Commissioner Bill McDonough who noted that the bump out of the addition is strictly architectural and not within the setback.

Kent Richards requested that a current as-built showing the entire addition be submitted and that he and the Board will drive by the property.

Mr. McDonough stated that the Oliveiras cannot submit an as-built at this time because it has not yet been required by the Building Inspections Office.

There being no one else to speak, the public hearing was continued.

**The Board heard the new public hearing for Case #5652, the application of Miguel E. Cabrera for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-3.4(#5) TABLE OF USE REGULATIONS - RESIDENTIAL to convert an existing mixed-use into a two-family dwelling, the subject premises being located at 195 Pine Street, more specifically Assessor 's plat #39, lot #69, located in the General Business zoning district.**

The Board reviewed the Form Z3 - Request to Withdraw Petition submitted by Charles Hillier of AJA Architects & Design Build on behalf of Miguel Cabrera, received January 12, 2023, relative to the special permit application for 195 Pine Street, Case #5652.

Kent Richards made a motion to grant the petitioner's request to withdraw without prejudice the special permit application of Miguel Cabrera for 195 Pine Street, Case #5652. Sandra Varrieur seconded the motion. All voted in favor.

**The Board heard the continued public hearing relative to Case #5647, the application of W.B. Construction & Development, Inc. for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-10.2 EARTH REMOVAL for an earth removal operation to accommodate site grading associated with the construction of three 60'x100' one-story buildings each containing 6,000± square feet of floor space, with a maximum of four units in each building, to be occupied by building trade uses, craft shop uses, or light industrial uses and a variance pursuant to §17-8.9 VARIANCES from the provisions of §17-5.9(D) GENERAL PARKING AND LOADING SPACE STANDARDS to exceed the maximum permissible entrance/exit driveway width of twenty-five (25') feet, the subject premises being located at 0 County Street, more specifically Assessor's plat #104, lot #27, located in the Industrial zoning district .**

Speaking in favor of the application was attorney Edward Casey of Coogan Smith, LLP who stated that the applicant is proposing to construct three 6,000-square foot industrial buildings. He stated that the revised plans that they submitted incorporate changes to the drainage plan recommended by the stormwater peer reviewer and changes to lighting and landscaping plan recommended by the Planning Board. He pointed out that no one has spoken in opposition to the proposal, but they are being proactively sensitive to the surrounding neighbors.

Mr. Ayrassian reminded the Board that staff had asked the applicant improve sight distance and traffic management by exploring the relocation of the proposed driveway curb cut in a northerly direction to align with Phillips Street to create a four-way intersection. He stated that he advanced the same recommendation to the Planning Board and acknowledged that they felt the proposed location of the driveway curb cut is acceptable. He stated that unless the Zoning Board has any strong sentiments about exploring the relocation of the proposed driveway curb cut, he retracts his recommendation.

It was the consensus of the Board not to revise the proposed location of driveway curb cut.

Mr. Ayrassian asked whether details have been presented regarding the proposed signage for the site.

Speaking in favor of the application was Bill Ward of W.B. Construction & Development who replied that the signage is shown on the revised plan.

Ms. Davies pointed out that they will have to either relocate the sign because it appears to her that it is located within the minimum 10-foot setback requirement or request a special permit. She asked what kind of sign is proposed.

Mr. Ward replied a free-standing, pylon sign.

Mr. Davies inquired the status of the stormwater peer review.

Mr. Ward stated that they are in the process of scheduling a work session with the Planning staff and the city's consultant engineer.

There being no one else to speak, the public hearing was continued.

**The Board held a business meeting.**

**The Board discussed Case #5621, the application of Thomas O. Castro for a special permit pursuant §17-12.0 FLOOD PLAIN DISTRICT to work/excavate within the 100-year floodplain to construct of a one-family dwelling, the subject premises being located at Thacher Street and Cypress Road, more specifically Assessor's plat #36, lot #462, #466, and #475, located in the Single Residence -B zoning district.**

Kent Richards made a motion to grant a special permit pursuant to §17-12.0 FLOOD PLAIN DISTRICT to conduct work/excavation in the 100-year floodplain district in association with the construction of a single-family dwelling, as shown on the site plan entitled "COMPENSATORY STORAGE PLAN AND CALCULATION", engineered by Bryan J. Weiner, R.P.E. of Dunn-McKenzie, Inc. with an office at 206 Dedham Street, Norfolk, MA 02056, dated March 26, 2022, revised through December 27, 2022. Sandra Varrieur seconded the motion. A discussion followed. All voted in opposition. The motion failed and the special permit was denied.

The Board tabled the pending minutes of December 15, 2022.

The Board reviewed all remaining correspondence.

The meeting adjourned at 7:45 p.m.