



**City of Beverly  
Zoning Board of Appeals  
February 24, 2021 at 7:00 pm**

CITY OF BEVERLY  
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CITY CLERK'S OFFICE

These minutes are not a verbatim transcript of the public hearing of the Board of Appeals. Reviews of the Board's Decision or outcome of the public hearing should include an examination of the Board's decision for that hearing.

2021 Appeals A 9:13

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**Members Present:** Joel Margolis, Chairperson, Victoria Caldwell, Pamela Gougian, David Battistelli, Jim Levasseur, Kevin Andrews, alt.

**Members Absent:** Margaret O'Brien, alt., Stefano Basso, alt.

**Others Present:** Steve Frederickson, Building Commissioner  
Leanna Harris, Zoning Board Administrative Assistant

**Location:** Remote

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Mr. Margolis began the meeting at **7:05 pm.** and as a preliminary matter, stated the following:

Before beginning the meeting, I am confirming that all members and persons anticipated on the agenda are present and can hear me.

- Members, when I call your name, please respond in the affirmative.
- Staff, when I call your name, please respond in the affirmative.
- Anticipated speakers

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**I. NEW PUBLIC HEARINGS**

**A. Alice Beltran**

In a petition for a request for a **Special Permit** to operate a kennel and a dog daycare as an accessory use to the kennel. The property is located at 54 West Dane Street in the IG zoning district.

Alice Beltran addressed the Board and stated due to Covid she is moving her dog daycare from Danvers to Beverly. They have a lot less clientele and the area where they are renting now is not sustainable. Many of their clients are from Beverly and so moving to Beverly near the pet friendly condos and the commuter rail is the right move for them. The rent is significantly lower at this new location.

Richard Vincent, the commercial broker representing the landlord stated there are no issues or concerns having Northshore Dog as a tenant.



Mr. Battistelli stated James Lovatt at 348 Rantoul Street wrote a letter opposing this application based upon another dog daycare at Park Street where there is excessive barking. Mr. Battistelli asked Ms. Beltran how this daycare will prevent that. Ms. Beltran stated Northshore Dog is staffed overnight and they also operate with different rooms with walls versus the fencing Loyal Canine uses. Ms. Beltran explained how dogs being able to see other dogs through a fence but not be able to get to them can promote barking. Ms. Beltran stated she does not know if Loyal Canine has staff overnight.

Ms. Caldwell stated there were also two letters in support of the application from Michael and Andrea Barone and Breanna Lucci. Ms. Caldwell stated this location seems further away from residential properties and she doesn't have an issue with it.

**MOTION:** Mr. Levasseur moved to close the public hearing.

Mr. Battistelli seconded the Motion.

Votes in favor: 5-0 (Margolis, Caldwell, Gougian, Battistelli, Levasseur)

**Motion carries.**

**MOTION:** Mr. Levasseur moved to GRANT a **Special Permit** at 54 West Dane to operate a dog kennel daycare. Mr. Battistelli seconded the Motion.

Votes in favor: 5-0 (Margolis, Caldwell, Gougian, Battistelli, Levasseur)

**Motion carries.**

### **B. Andrew Breton and Leah Knight**

In a petition for a request for a **Special Permit** to replace a nonconforming detached garage with a detached accessory structure, with no change in setbacks. Garage has a rear setback of 0.3' where 25' is required and a right side setback of 1.9' where 10' is required. The property is located at 31 High Street in the R6 zoning district.

Ryan McShera (Red Barn Architecture) addressed the Board on behalf of the applicants and stated they had a structural engineer come out and view the garage and submit a report. The applicants are seeking to build a new garage on the same footprint. The existing garage is nonconforming.

Several abutters submitted letters expressing concerns.

Meredith Johnson and Al Lavoie, 29 High Street stated they are the closest abutters to the garage and they would prefer it remain a garage and not become an accessory structure.

Kent Sinclair, 18 High Street, stated he is concerned about the parking and creating living space.

Mr. Margolis asked Mr. Frederickson if this house is a legal two family and if it's possible to add an additional unit to create a third family. Mr. Frederickson stated the application states it's a single family and this is the first he is hearing that it's a two family.



Mr. McShera stated the existing building is an existing two family. There is no intention to convert the accessory structure into a third unit. They are just looking for a little more room for their family. Mr. McShera stated as far as the parking they are not looking to add another unit and the existing parking is enough to satisfy the existing two family. The existing garage is not large enough to accommodate a car.

Mr. Battistelli stated he can appreciate the applicant is willing to make concessions but a garage that is four inches from the property line is much different than living quarters where people would use a living room and a bedroom loft. Mr. Battistelli stated he is not in favor of this and they do not have abutter support.

Mr. McShera stated the garage loft is only about 84 sq. ft and not more than 2½ feet tall. It was their attempt to gain more natural light, it not habitable space.

Suzanne Lanzikos, 35 High Street submitted a letter in opposition and stated they have lived there for 36 years and she has several concerns regarding the accessory structure. Ms. Lanzikos asked what the height of the proposed structure will be.

Mr. McShera asked the Board for a continuance and stated they are going to go back to the drawing board and meet with some neighbors.

**MOTION:** Ms. Caldwell moved to continue the hearing on the petition at 31 High Street subject to signing the Waiver and Agreement. Mr. Battistelli seconded the Motion.

Votes in favor: 5-0 (Margolis, Caldwell, Gougian, Battistelli, Levasseur)

**Motion carried.**

### **Kevin and Jennifer Stacey**

In a petition for a request for a **Special Permit** to replace a non-conforming detached garage with an attached garage with a left side setback of approximately 7' where 20' is required. The new garage will be no closer to side lot line than the existing garage. The property is located at 11 Rezza Road in the R45 zoning district.

Jennifer Stacey addressed the Board and stated they would like to reconstruct their garage. It is a hazardous structure that has sunk two feet in the back and they can longer shut the door and there are many cracks. It was built with many cinder blocks in the 1950s. They would like to demolish and build a new garage and attach it to the house with the 4ft of space available. It would have a small space above for an office or a gym.

No one spoke in favor or against.

Mr. Battistelli stated this will add value to their house and the surrounding houses and he is in favor. Mr. Battistelli stated it will look great when it is done.



**MOTION:** Mr. Battistelli moved to close the public hearing.  
Mr. Andrews seconded the Motion:  
Votes in favor: 5-0 (Margolis, Caldwell, Gougian, Battistelli, Levasseur)  
**Motion carries.**

**MOTION:** Ms. Caldwell moved to GRANT the **Special Permit** at 11 Rezza Road to build a new attached garage with access to the space above, subject to the plans submitted. Ms. Gougian seconded the Motion.  
Votes in favor: 5-0 (Margolis, Caldwell, Gougian, Battistelli, Levasseur)  
**Motion carries.**

**C. Mark and Sarah Patrie**

In a petition for a request for a **Variance** to construct an attached two-car garage to right side of nonconforming dwelling. Garage will have a right setback of 8' where 15' is required. The property is located at 16 Auburn Road in the R10 zoning district.

Mark Patrie stated they are seeking to add a 2-car garage where they can store their vehicles, snow blowers, etc. and tie it into the additional plans which include building a second story with a large family room above the proposed garage. There is no abutting neighbor on the side of the opposed changes. The bus depot is the closest structure.

Mr. Margolis asked Mr. Patrie to address the hardship and Mr. Patrie stated they have limited space to store vehicles. It's a narrow street with parking issues due to nearby funeral home. Mr. Patrie stated they would like to utilize the garage for their vehicles and then anyone visiting them could utilize their driveway. The current garage functions largely as a shed, its not properly utilized. Due to the shape of the lot there is no where else to put it.

Ms. Gougian asked if the stone wall is their lot line and Mr. Patrie stated it is about right.

Ms. Caldwell stated it doesn't look like it will interfere with any direct abutters. Ms. Caldwell agreed it would be helpful to get cars off the street.

No one spoke in favor or against.

**MOTION:** Mr. Andrews moved to close the public hearing.  
Mr. Battistelli seconded the Motion.  
Votes in favor: 5-0 (Margolis, Caldwell, Gougian, Battistelli, Andrews)  
**Motion carries.**



**MOTION:** Mr. Battistelli moved to GRANT a **Variance** at 16 Auburn Road to construct an attached 2-car garage to the right side of the nonconforming dwelling with a right side setback of 8', where 15' is required, subject to the plans submitted. Mr. Andrews seconded the Motion.

Votes in favor: 5-0 (Margolis, Caldwell, Gougian, Battistelli, Andrews)

**Motion carries.**

**D. Alexander & Femino o/b/o Donald and Lyne McAuliffe**

In a petition for a request for a **Special Permit** to allow a 900 sq. ft. in-law apartment for the parents of owner Lyne McAuliffe, namely Robert and Marie Fitzgerald. The property is located at 18 Landers Drive in the R22 zoning district.

Tom Alexander, Esq. (Alexander & Femino) addressed the Board and stated the applicants have lived at this location since 1994. They are seeking to build an in-law apartment for Ms. McAuliffe's parents, Robert and Marie Fitzgerald and an affidavit has been provided. The addition would be one story to the rear of the property and complies with all zoning setbacks. The 900 sq. ft. in-law proposal is 27.4% of the lot area. The addition is limited to the principle dwelling. This Special Permit would create two units. The unit is self contained and will share a common wall with the existing dwelling with an opening door between the two units. The will be at the rear of the property. They have complied with all zoning requirements for the accessory apartment.

Craig Perkins stated he has lived next door since 1999 and they are great neighbors and a fantastic family. Mr. Perkins would like more information as to what the plans are and what the City setbacks are.

Donald McAuliffe stated he spoke with the neighbor that this addition is closest to.

Ms. Gougian asked if this will be on a foundation or will it be on a slab and Mr. McAuliffe stated it will have a foundation. Ms. Gougian asked if they anticipate any blasting. Ms. Gougian stated her parents lived into their 100s, if this is an in-law apartment it will have to be transferred back into the house when it is no longer used as an in-law apartment.

Ms. Caldwell stated they are able to build this addition by right and they are before the Board because they are looking to use it as an in-law.

**MOTION:** Ms. Gougian moved to close the public hearing.

Ms. Caldwell seconded the Motion.

Votes in favor: 5-0 (Margolis, Caldwell, Gougian, Battistelli, Levasseur)

**Motion carries.**

Mr. Battistelli stated he can appreciate needing space in-laws and stated he is concerned about the abutters at 72 Middlebury Lane even though they aren't here. They are going to be looking at 76 feet of wall.



**MOTION:** Ms. Caldwell moved to GRANT the **Special Permit** at 18 Landers Drive to add a 900 sq. ft. one story addition to serve as an in-law apartment for Robert and Marie Fitzgerald the parents of Lyne McAuliffe, the in law may exist as long as the Fitzgeralds are occupying the unit, subject to the plans submitted.

Mr. Levasseur seconded the Motion.

Votes in favor: 5-0 (Margolis, Caldwell, Gougian, Battistelli, Levasseur)

**Motion carries.**

### **E. Douglas and Sarah Turnbull**

In a petition for a request for a **Variance** to raise and extend existing shed dormer and raise ridge and sidewalls of gabled extension to match existing wall and ridge heights on second floor. The existing structure has a right side setback of 1.3' where 15' is required and a front setback of 4.5' where 20' is required." The property is located at 174 Hale Street in the R10 zoning district.

Sarah Turnbull addressed the Board and stated they are proposing to change the roofline in the back of the house to gain 300 sq. ft. so they can add a second bathroom. They have 3 young children and access to existing rooms does not flow correctly. This change would connect all bedrooms to a central stair case and add a bathroom. They love the area and they have roots in the community. They have letters in support from neighbors. There will be no change to the footprint of the home.

Ms. Caldwell asked for clarification as to why they need a Variance and Mr. Frederickson stated the ordinance specifically says you have to have at least half the required setback or you need a Variance.

No one spoke in favor or against.

**MOTION:** Ms. Caldwell moved to close the public hearing.

Mr. Levasseur seconded the Motion.

Votes in favor: 5-0 (Margolis, Caldwell, Gougian, Battistelli, Levasseur)

**Motion carries.**

**MOTION:** Ms. Caldwell moved to GRANT the **Variance** at 174 Hale Street seeking relief from 300-83 to alter the roof line at the rear at the house, due to a hardship caused by the position of the house on the lot, subject to the plans submitted.

Mr. Levasseur seconded the Motion.

Votes in favor: 5-0 (Margolis, Caldwell, Gougian, Battistelli, Levasseur)

**Motion carries.**

[ 5 minute recess ]



## II. ADMINISTRATIVE APPEAL

### A. Carol Horvitz, Trustee of the Edgewater House Trust and Jeffrey Horvitz

In a petition for a request for an **Appeal** to Building Permit B-20-184, issued by the Building Commissioner on April 10, 2020. The property is located at 63 West Street in the R45 zoning district.

Heather Gamache, Esq. (Rackemann, Sawyer & Brewster) addressed the Board and stated she represents Carol and Jeffrey Horvitz, who are Beverly residents living at 65 West Street. The Horvitz are opposing the issuance of a Building Permit to erect a single family home at 63 West Street. Ms. Gamache provided a brief history of the building permits issued and appeals.

In 2020 Judge Long issued a decision that the Building Commissioner was not to consider frontage but could consider any other issues that exist.

On February 13, 2020 Mr. Wile submitted a request for a building permit to erect a single family home on 63 West Street. The Building Commissioner reconsidered the 1999 application and reissued BP 60658. Inquiries to the building permit were made and information obtained was that it was being considered in conjunction with a 2006 plan. They received a copy of the 1999 building permit application and a 2006 plan, they did not receive a 2020 building permit application.

Jeffrey Horvitz addressed the Board and stated the Wile's divorce decree orders Mr. Wile to be responsible for nonpayment of real estate taxes. Mr. Horvitz stated Mr. Wile has ignored that order and stopped paying. The accumulating unpaid tax is now in its second decade approaching \$300,000. For 3 years Mr. Wile has stored a boat and trailer on the property without a permit. Mr. Horvitz stated the ZBA has the authority to deny based on unpaid real estate taxes and unpaid fines. The Wiles are not Beverly residents but yet they have the highest unpaid real estate fines.

Sander Rikleen, Esq. (Sherin & Lodgen) stated he has represented Mr. Wile for many years and he has previously been in front of this Board. This is a Building Permit appeal not a tax collector or a probate court trying to figure out what Mr. Wile didn't do under his divorce decree. Atty. Rikleen stated in 2007 when they sought a building permit the issue was whether the property had adequate frontage and at the time the building inspector and ZBA didn't think they did. The Land Court recently ruled that the property does have legal frontage and denying the building permit in 2007 was invalid and it should come back before the Building Department again. At that time Mr. Wile applied for a new building permit. The building permit is dated 2/12/2020. There is no reference to anything submitted in 1999, it stands on its own. All plans submitted are dated 2006, they are the same plans used in 2007 when they sought a building permit, they have nothing to do with 1999.



Kevin Corridan stated it is his understanding the building inspector treated this as a new permit and linked it to a previous permit to since the fee had already been paid. It is not in the purview of the ZBA to withhold a permit.

Mr. Frederickson stated Mr. Wile did apply for a new permit with a new application and submitted a new set of plans for review. Mr. Frederickson stated the only reason he put the word reissuance on the permit with a new number was for the purpose if they are ever audited it would flag the auditor as to why a fee wasn't charged. It was new application, new plans, new permit number and it was routed to other departments for review. Mr. Frederickson stated he doesn't understand why the word reissuance is being questioned.

Carol Horvitz stated for the record they had nothing to do with their divorce as Atty. Rikleen previously stated.

**MOTION:** Ms. Caldwell moved to close the public hearing.

Mr. Battistelli seconded the Motion.

Votes in favor: 5-0 (Margolis, Caldwell, Gougian, Battistelli, Levasseur)

**Motion carried.**

Mr. Battistelli stated as soon as the property is sold the City will get their taxes.

**MOTION:** Ms. Caldwell moved to overturn the Building Inspector's decision to issue a building permit for 63 West Street. Mr. Battistelli seconded the Motion.

Votes in favor: 0-5 (Margolis, Caldwell, Gougian, Battistelli, Levasseur)

**Motion Denied.**

### **OTHER BUSINESS**

Approval of January 27, 2021 ZBA Minutes (Levasseur)

**MOTION:** Mr. Levasseur moved to approve the minutes from the January 27, 2021 meeting. Mr. Battistelli seconded the Motion.

Votes in favor: 5-0 (Margolis, Caldwell, Gougian, Battistelli, Levasseur)

**Motion carries.**

**MOTION:** Ms. Caldwell moved to adjourn the meeting at **9:34pm.**

Mr. Andrews seconded the Motion.

All in favor

**Motion carries.**

Leanna Harris, Administrative Assistant  
Board of Appeals of the Zoning Ordinance



## City of Beverly – Public Meeting Ground Rules

This Open Meeting is being conducted remotely, consistent with Governor Baker’s Executive Order of March 12, 2020, in response to the outbreak of COVID-19, which allows public bodies to meet entirely remotely so long as adequate alternative public access is afforded.

- Other participants or viewers may be able to see and hear you. You have the option to turn off your video if you are participating via computer.
- Mute microphones or phones unless recognized by the Chair to reduce background noise and feedback. Mute yourself by clicking the microphone mute/unmute icon at the bottom of the screen, pressing the mute button on your telephone, or by pressing \*6 on your telephone keypad. The host may mute you.
- Use the Chat function for technical difficulties and to indicate you’d speak and not for public comment.
- Wait until the person speaking has finished before speaking so we can clearly hear all participants.
- State your name and address or affiliation before speaking.
- Speak clearly, loudly, and in a way that helps generate accurate minutes.
- Regarding public comment:
  - After speakers conclude, the Chair will invite Board members to provide comment, questions, or motions.
  - After members have spoken, the Chair may afford public comment as follows:
    - The Chair will first ask members of the public who wish to speak to identify their names and addresses only; you may also write “me” in the chat function.
    - Once the Chair has a list of all public commenters, she will call on each by name.
    - Public comment is at the Chair’s discretion unless required by law (such as a public hearing).