



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

CITY OF BEVERLY  
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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.

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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 **7:00 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. **Joshua Givens**

In a petition for a request for a **Special Permit** to expand the existing attached garage by approximately 2' to the right, resulting in a right side setback of 10'1" where 15' is required. The property is located at 7 Kernwood Heights in the R10 zoning district.

Joshua Givens addressed the Board and stated he currently has a one car garage that is 11 feet wide and it is difficult to fit a car in it. Mr. Givens would like to extend the garage to 14 feet. The current frontage on the property is about 70’ where 100’ is required.

John Donald, 5 Kernwood Heights has submitted a letter in favor.

No one spoke in favor or against.



Mr. Andrews asked for confirmation that Mr. Givens is making the garage four feet wider and Mr. Givens stated it will be 14' total, the current garage is about 11'. Mr. Givens stated he is adding 2-3 feet.

Mr. Battistelli stated this is a very modest request, there is absolutely no way to fit a vehicle in the current garage.

Ms. Gougian asked if the plans show how far the addition will be from the lot line. Mr. Givens stated the plans do state it is 10.1' from the lot line. Mr. Levasseur stated it is on Plan A-1

**MOTION:** Mr. Battistelli move to close the public hearing.

Mr. Levasseur seconded the Motion.

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

**Motion carries.**

**MOTION:** Mr. Levasseur moved to GRANT the **Special Permit** for 7 Kernwood Heights to widen the existing garage to 14 feet total, based on the plans submitted.

Mr. Battistelli seconded the Motion.

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

**Motion Carries.**

### **B. Brian and Jennifer Cotting**

In a petition for a request for a **Variance** to construct a 8' x 20' addition on right side of house. Addition will have a right side setback of 4' where 15' is required. The property is located at 41 Livingstone Avenue in the R10 zoning district.

Brian Cotting addressed the Board and stated they are looking to add a first floor addition for a second bathroom for their growing family. Above the bathroom will be closet space. Jennifer Cotting stated they only have one bathroom on the second floor.

Mr. Margolis asked them to address the Variance. Tom T Byrne spoke on the applicant's behalf and stated that side of the house has an existing 'pantry width' egress which makes it hard to heat and it is not a viable space. By removing that egress, it would allow them to have a full foundation for the bathroom addition. The addition will have to go out on an angle 4' from the existing lot line. The existing structure is 6 feet from the lot line. The hardship is the width and shape of the lot.

Cynthia O'Neill (39 Livingstone Ave) and Kathleen O'Brien (43 Livingstone Avenue) submitted letters in favor.

Matt Sullivan, 44 Livingstone Avenue stated he lives across the street and he is in favor of the request.



Mr. Battistelli asked for confirmation that the neighbor to the right is in favor and Mrs. Cotting stated number 39 Livingstone Avenue has submitted a letter in favor. Mr. Battistelli stated the addition is a little closer than he is comfortable with but if they are ok with it then he is. Ms. Caldwell agreed.

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

Ms. Gougian seconded the Motion.

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

**Motion Carries.**

Ms. Gougian asked how many feet would be between the new addition and the lot line and Mr. Cotting stated approximately 4' but that is the driveway side for the neighbor so their house is actually about 18-20 feet away.

**MOTION:** Ms. Caldwell moved to GRANT the **Variance** at 41 Livingstone Avenue to remove an egress and construct an addition for a first floor bathroom with storage above 4' from the lot line where the previously structure had been 6' based on the size and width of the lot creating a hardship, subject to the plans submitted.

Mr. Battistelli seconded the Motion.

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

**Motion carries.**

### **C. Glovsky & Glovsky o/b/o Vittori-Rocci Post 56 and Italian American War Vets**

In a petition for a request for a **Special Permit/Finding** to authorize a 3 story, 13,158 sq. ft. addition to an existing nonconforming building in the IR/IR Overlay District. The existing nonconforming situation includes a 1.25 acre lot where 2 acres is required, a 19.4 foot front yard setback where 30 feet is required, an 18 foot setback where 20 feet is required and a lot coverage ratio (building and impervious surface) of 85.9% where 60% is the maximum allowed. The new addition will comply with all applicable setback and height requirements. The property is located at 143 Brimbal Avenue in the IR and IR Overlay District.

Miranda Siemasko, Esq. (Glovsky & Glovsky) addressed the Board and stated the applicant intends to purchase the property and convert the existing building which includes a social club on the basement level and an event hall on the ground level to the headquarters for their carpet business. It would house many parts of their operation. They are currently utilizing two buildings in Salem. They have agreed to lease back the ground floor club room for up to five years after the closing. This will be a phased project. The second phase would include a new 3-story addition as shown on the plans, that would accommodate the combined facility. The full operations for the site would not move until the addition is complete and the Rocci Post has vacated the basement.

Atty. Siemasko stated the applicants sat down with the Mayor and the Planning Department before they started this project and as a result of those meetings, the plans have gotten smaller. From the very first meeting it was plain that Mr. Stantin would be opposing this project and the



applicants believe it his chief motivation for this opposition is driven by the fact that Mr. Stantin tried very hard to purchase this property himself and not the issues outlined in the written opposition. Ultimately those negotiations were unsuccessful, the parties could not agree on a price.

Atty. Siemasko stated the residential neighbors in this area do have valid issues and they have attempted to meet with and address their concerns and make them aware of the good things this project offers. Four members of the neighborhood expressed more concern regarding the Brimbal Avenue changes that have taken place and much less was raised about this particular project.

This project presents the opportunity for a reasonable scaled retail site with low traffic and parking demands. The carpet and rug industry requires a lot of square footage for storage, but it does not generate a large amount of retail traffic on a daily basis. There was an unsigned flyer that was circulated amongst the neighbors and it contained a lot of erroneous information, most notably that the whole project was just a reuse to get the project approved and then flip it and put in a retail store like Bed Bath and Beyond.

Atty. Siemasko stated the existing lot and the existing building are nonconforming, as is the use. The lot is nonconforming with respect to size, the minimum lot size in the IR and IR Overlay District is 2 acres and this site is about 1¼ acres. The building is a 2-story building, and it does not meet the front setback or one of the side setbacks by a modest amount. The site is virtually all paved, it is either building or parking lot and exceeds the 60% pervious lot coverage limit. Social Club use is not allowed in the IR or IR Overlay District. Atty. Siemasko stated this application is able to take advantage of the IR Overlay District that was recently repealed by City Council due to Mr. Stantin and the Rocci Post in 2016 preparing subdivision plans which froze the IR Overlay District. Atty. Siemasko stated there is no question the zoning freeze applies to this property and that it opens a whole variety of uses for this site that are otherwise not possible such as restaurants or multi-use buildings, banks, laboratories. All of which could be done at this site by right.

Thad Siemasko (Siemasko & Verbridge) addressed the Board and provided an overview of the project and the Site Plan.

Rebecca Brown (GPI) addressed the Board and provided the findings from the traffic and parking study conducted. Ms. Brown also discussed anticipated traffic based on peak and non-peak hours. In the interim condition, there would be a total of 56 parking spaces needed based on zoning requirements and there are 83 parking spaces available. During the permanent condition there would be 59 spaces available which is 7 less than required.

Mr. Battistelli asked Ms. Brown to explain how they determined an average of 4 people per car and Ms. Brown stated it is based on zoning requirements requiring 1 table for four people.

Mr. Margolis stated asked if anyone would like to speak in favor of this petition.



Kathleen Feldmen (Ward 5) 20 Somerset Avenue stated she has been over this proposal and she is in favor. Ms. Feldman stated she has met extensively with the area neighbors and they have discussed the type of retail space they would like going into this building and she thinks a Northshore family-owned business is a win-win for the community and the property.

Kathy Burack, 6 Brimbal Hills Drive stated she appreciates Atty. Siemasko's careful comments regarding steps taken to reach out to the Community. Ms. Burack stated she was an active member of former Brimbal Ave Group working against the Whole Foods market and mall and she is concerned about the increase in traffic on Brimbal and on Dunham. Ms. Burack stated she is in favor of this project and she appreciates the concerns from the applicants.

Kevin Andrews stated he thinks this is a great use of space given what is already in the area and the side of the road it is on. Mr. Andrews stated he thinks they should move forward to approve it.

Bill Sheehan, Esq. (MacLean, Holloway, Doherty & Sheehan, P.C.) stated he represents 133 Brimbal Ave, LLC and Mr. Stantin is the Principal. They are both here in opposition that is solely motivated by protecting the property at 133 Brimbal Avenue and the suggestion of an ulterior motive is a horrible way to start a presentation of a project. Atty. Sheehan stated Mr. Stantin and 133 Brimbal Ave, LLC were interested in purchasing 143 Brimbal Avenue so they could control what happens there. It proposed a major problem for the tenants at 133 Brimbal Avenue. The undersized lot and the building are nonconforming to all elements of zoning and it does at the present time conform to the parking requirements. Atty. Sheehan stated the applicant is looking to increase the building by 75% and reduce the parking by 30%. The applicant needs relief from this Board and also from the Planning Board and Atty. Sheehan stated he doesn't not know why the application was started with the Zoning Board.

Atty. Sheehan stated this property is in the IR district, it is not in the IR Overlay district, it was at one time in the IR Overlay district, and it was removed by a zone change signed by the Mayor in April 2016.

Atty. Sheehan stated the use on which the application is premised is not lawful.

Atty. Sheehan stated the applicant has acknowledged they don't have sufficient parking and without that this Board cannot and should not approve the application. Atty. Sheehan reviewed how the calculation was reached and stated the zoning ordinance requires 96 spaces. This plan does not come close to meeting the parking requirements. The Planning Department has the power to reduce some of the requirements, but they cannot reduce the number of parking spaces.

Mr. Andrews asked what the impact of the parking is going to be on the neighborhood.



Ernest Stantin, 133 Brimbal Avenue stated they hired Mr. Siemasko to draw plans for the building at 143 Brimbal Avenue and they were not what they were looking for. Mr. Stantin stated he has owned the property at 133 Brimbal Avenue for 17 years and they have allowed the Rocci Post to use their property when they needed extra parking spaces for functions. Mr. Stantin stated when they learned the property would not be sold to them, they put up a barrier to define their property because patrons of the club have cut through their property. Mr. Stantin stated parking in this area has been a problem the 17 years he has owned his property and they are opposed to the expansion of the building which will reduce the parking.

Mr. Andrews state the main parking problem would be with the current lessee rather than the carpet company. Mr. Siemasko agreed and stated a function hall with a large capacity would certainly generate more cars than the carpet company. Ms. Brown stated they anticipate the Post parking need will go down with the elimination of that second-floor room. Mr. Stantin disagreed.

Mr. Margolis asked for confirmation that no addition will be added while the Rocci Post is still there on the lower level and Atty. Siemasko confirmed. Atty. Siemasko stated they would not rule out construction while the lower-level tenant is still there, but it may make sense to begin some of the prebuilding in the final lease year.

Ms. Gougian asked for more information on the Overlay district.

Atty. Siemasko stated the IR Overlay District was frozen in 2016 for this parcel. It allowed the Whole Foods Plaza to be developed allowing retail and other mixed uses. In 2016 the City Council and the Planning Board started discussions to change the zoning and Mr. Stantin filed preliminary subdivision plans and requested the zoning be frozen so they could retain that benefit.

Atty. Siemasko stated Atty. Sheehan raised a good point as to the timing of the project being reviewed by the Planning Department and the Zoning Board. Atty. Siemasko stated there is no mandate that an applicant go before a particular Board prior to another, and they are before this Board simply because they could go before this Board first and quickly.

Atty. Siemasko stated the Planning Department does have the ability to revise parking requirements on a specific basis. The parking requirements really do not work and the traffic and parking study proves that this is a low traffic impact use.

Mr. Stantin stated to expand this building 75% on an already undersized lot doesn't make any sense.

Mr. Margolis stated he thinks this is an appropriate use of the building and the land in that neighborhood and he doesn't have an objection.

Ms. Gougian asked if maintaining it as retail is in perpetuity or if they have to reapply. Atty.



Siemasko stated once relief is granted it runs with the land in perpetuity subject to conditions imposed by the Board. Ms. Gougian stated if business is not doing well, they could potentially sell to a Bed Bath and Beyond and Ms. Siemasko confirmed and stated she doesn't know if they would be able to meet the same parking requirements as this use. Ms. Siemasko stated the Planning Department could put a condition in the approval stating that a change in hands would require further approval. Ms. Gougian asked if they have water management plans and Atty. Siemasko stated Griffin Engineering is working on a Stormwater plan.

Atty. Sheehan stated the Board has nothing in front of them at this time to say this is not more detrimental to the neighborhood.

Mr. Margolis stated one reason he is favorable is given the alternatives. Mr. Margolis asked Mr. Frederickson what could go there by right if they did not approve this.

Mr. Frederickson stated they could have a 60' tall building in that zone, a brewery, a distillery a winery, manufacturing, assembling, research and development, contractor's yard, all allowed by right in that zone.

Mr. Battistelli asked if they do not build for four or five years would the Variance still apply. Mr. Frederickson stated a Variance needs to have action on which is generally a foundation in the ground. A Special Permit is two years. Mr. Frederickson stated COVID makes things a little different though, the Governor has waived all deadlines.

**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.**

Ms. Caldwell stated the questions raised here are really questions for the Planning Department. Ms. Caldwell stated she is prepared to vote on this tonight.

**MOTION:** Ms. Caldwell moved to GRANT the **Special Permit** at 143 Brimbale Avenue to allow the expansion of a nonconforming building on an undersized lot with the purpose of a carpet operation and also a **Finding** that the proposed use and structure are not substantially more detrimental to the neighborhood than the existing building and use.

Mr. Levasseur seconded the Motion.

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

**Motion carries.**

### **OTHER BUSINESS**

Approval of February 24, 2021 ZBA Minutes (Battistelli)



**MOTION:** Mr. Battistelli moved to approve the Minutes from the February 24, 2021 meeting. Mr. Levasseur seconded the Motion.

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

**Motion carries.**

**MOTION:** Mr. Margolis moved to adjourn the meeting at **9:07 pm.**

Mr. Battistelli 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).