

CITY of BEVERLY
Zoning Board of Appeals
August 23, 2023 at 7:00 pm

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

Members Present: Kevin Andrews, Chairperson, Pam Gougian, Margaret O'Brien, alt., Will Cosmas and Cory Farinella

Member Absent: Jim Levasseur

Others Present: Jim Butler, Building Commissioner
Leanna Harris, Administrative Assistant

Location: Council Chambers City Hall, 191 Cabot Street, Beverly

Kevin Andrews, Chairperson began the meeting at **7:05 pm.** and introduced the Board members present.

NEW PUBLIC HEARINGS

Joseph Butler

requests a **Special Permit** to construct a full rear dormer within the existing footprint. The property is located at 1 Echo Avenue in the R10 zoning district.

Joseph Butler stated he and his wife live in Hamilton but own the property at 1 Echo Ave. They purchased it in November 2019 for their daughter and son-in-law. They are looking to construct a full rear dormer and three small gable dormers on the front. The L-shaped lot is nonconforming and it is just over 7,800 sq. ft. It was configured by a 1999 ZBA Variance. All of the dormers will fit within the existing footprint. Jim Butler stated it is an existing nonconforming structure.

Ms. O'Brien asked if the house will look similar to the neighbor's house and the applicant confirmed. Ms. O'Brien asked if the pitch of the roof is the same and stated it looks more shallow. The applicant stated it is similar and it will look very much like the house to the right.

Mr. Cosmas asked what the increase in square footage will be and the applicant stated they may gain 20-30 sq. ft. from the front gables.

No one spoke in favor or against.

MOTION: Ms. O'Brien moved to close the public hearing.

Mr. Farinella seconded the Motion.

Votes in favor: 5-0 (Andrews, Gougian, Cosmas, Farinella, O'Brien)

Motion carries.

Ms. Gougian asked about the rear shed dormer and if there is a small 10'x14' addition with Juliette space. Mr. Butler asked if it will be habitable space and the applicant stated it will not be, it's just a balcony.

Mr. Andrews stated it looks like a reasonable request and a nice design.

MOTION: Ms. O'Brien moved to GRANT a **Special Permit** at 1 Echo Avenue to construct a full rear dormer within the existing footprint, subject to the plans submitted. Mr. Cosmas seconded the Motion.

Votes in favor: 5-0 (Andrews, Gougian, Cosmas, Farinella, O'Brien)

Motion carries.

Kelly Nardella

requests a **Special Permit** to construct a 12'x22' left side addition and full rear dormer to extend length of existing home 4' into the setback, where 15' is required. The property is located at 10 Red Rock Lane in the R10 zoning district.

Anthony and Kelly Nardella addressed the Board and stated they are both lifelong residents of Beverly.

Mrs. Nardella stated they are looking to construct a 12'x22' left side addition and provided plans to the Board. Mrs. Nardella clarified that the door shown on the side of the addition will actually be moved to the rear of the house. There is currently no access to the backyard without walking around. Mrs. Nardella stated there will be minimal encroachment on their neighbor and the home will remain a single family. The only bathroom is on the first floor and the bedrooms are on the second floor. They need a third bedroom for their growing family and the existing kitchen and bathroom are very small. The home is a cape style which is consistent with many homes in the neighborhood. Mrs. Nardella stated the addition will overall improve their property value and their quality of life.

David and Linda Clementson, 8 Red Rock Lane addressed the Board and stated they have concerns about the request. Mrs. Clementson stated there is 32' of flat land on the right side of the applicant's property and they are curious as to why that is not a better location for the bump out. The Clementson's stated they would like to see a written document stating the reason why they cannot build out on the right side.

Mr. Nardella stated to his knowledge he didn't say they were told they couldn't build out on the right side, he may have said there were challenges on the right side of the house. The contractors they met with advised them to build out on the left side. They are looking to enlarge the kitchen

which is located on the left side of the house.

Mr. Farinella asked the applicants if they considered bumping out towards the rear of the property to create more of an L-shape. Mrs. Nardella stated it wouldn't be an ideal design, it would be more helpful to create a square kitchen.

Mr. Andrews stated the front door of the house is already uncentered to the left and so it does seem like it would make sense to add to the other side of the house. Mr. Andrews asked for confirmation that they are looking to encroach 3.7' into the side setback, where 15' is required. Mr. Nardella confirmed.

Ms. Gougian stated this is a Special Permit request, not a Variance which goes with the land and so those suggestions of constructing to the right side or the rear don't really apply.

Ms. O'Brien stated it is a minimal request and what they are proposing is ok with her. It will be styled like other homes in the neighborhood.

Mr. Cosmas asked what the nonconformity is and Mr. Butler stated the lot size and the structure is nonconforming as it is. They will be increasing over 20%. The roof height will remain the same.

Mr. Andrews stated he thinks it's a reasonable request.

MOTION: Mr. Cosmas moved to close the public hearing.

Ms. O'Brien seconded the Motion.

Votes in favor: 5-0. (Andrews, Gougian, Cosmas, Farinella, O'Brien)

Motion carries.

MOTION: Mr. Cosmas moved to GRANT a **Special Permit** at 10 Red Rock Lane to construct a 12'x22' left side addition and full rear dormer to extend length of existing home 3.7' into the setback, where 15' is required, subject to the plans submitted.

Ms. O'Brien seconded the Motion.

Votes in favor: 5-0 (Andrews, Gougian, Cosmas, Farinella, O'Brien)

Motion carries.

Oliver Bejarano

requests a **Special Permit** to construct an addition within the height requirement on an existing nonconforming house which will enlarge the house less than 25%. The property is located at 14 Beckford Street in the RMD zoning district.

Oliver Bejarano addressed the Board and stated he is looking to build a bedroom on the second floor with a total square footage of 110 square feet. The home is nonconforming with regards to the front setbacks.

Mr. Bejarano provided, for the record, signatures from neighbors in favor.

Mr. Cosmas asked why they haven't acted on the Finding granted in 2020 and Mr. Bejarano and stated it was started and both projects will be done to completion.

Ms. O'Brien stated the addition drawing looks very large. Mr. Bejarano stated when both of the projects are completed there will be three living levels.

Ms. Gougian asked if the project they have previous approval for will make the building higher and Mr. Bejarano stated it will be three feet higher. Ms. Gougian stated she is asking herself if she would have approved this request if it was requested at the same time as what was approved in the Finding in 2020.

Mr. Andrews asked if any changes will be seen from the street and Mr. Bejarano stated no.

No one spoke in favor or against.

MOTION: Ms. O'Brien moved to close the public hearing.

Mr. Cosmas seconded the Motion.

Votes in favor: 5-0. (Andrews, Gougian, Cosmas, Farinella, O'Brien)

Motion carries.

Mr. Andrews stated it looks like the new addition will not be more detrimental to the neighborhood and there will be adequate public services.

Mr. Cosmas stated it looks like a small-scale addition compared to what has already been granted and acted upon.

MOTION: Mr. Farinella moved to GRANT a **Special Permit** at 14 Beckford Street to construct a second floor addition within the height requirement on an existing nonconforming house which will enlarge the house less than 25%, subject to the plans submitted. Ms. O'Brien seconded the Motion.

Votes in favor: 5-0 (Andrews, Gougian, Cosmas, Farinella, O'Brien)

Motion carries.

Alexander & Femino o/b/o CTDW Beverly LLC

requests a **Special Permit** to allow the use of the existing premises as a marijuana retailer and a waiver to allow the establishment within 300' of Ahern Park, in a straight line it is 221.67 feet, however between the Premises and the park there are private residences and a physical barrier of at least one 5-9' fence. The nearest public access to Ahern Park is on Pleasant Street in a straight line from the Premises of 437.76 feet. To walk or drive to the public access along Cabot Street and Pleasant Street is 535 feet. The property is located at 73 Cabot Street in the CC zoning district.

Tom Alexander, Esq. (Alexander & Femino) addressed the Board on behalf of the applicant who is seeking a Special Permit for a marijuana retailer who looking for relief from the 300' buffer.

The existing pub at the location is currently owned by two brothers who have been operating there for a number of years. They own the building and the lot. The owners are looking to rent the building out to CTDW and move the restaurant business to another location.

Atty. Alexander stated the Principals of CTDW also operate a very nice marijuana retail facility on Dodge Street in Salem, MA. At the time when they were going for their Host Agreement the City staff was very impressed with the Salem facility when they toured it.

This facility will be built out within the existing structure. They are investing \$600k into this property. There will be extensive renovations to comply with the many CCC regulations requiring things be set up a certain way. The parking will be dramatically improved by reducing the number of parking spaces from 14 to 12 which will allow better flow within the parking lot. They will have four spaces more than what is required for this business.

The Architect addressed the Board and provided an overview of the floor plans which include secure space for delivery. There will be one door that leads into the dispensary where you have to be buzzed in. The existing black awning will be removed and replaced with painted signage and uplighting.

Atty. Alexander stated this is an involved process, this isn't something that hasn't been designed lightly, it has had a lot of review and a lot of thought. Overall, Beverly voted 54% in favor of legalizing marijuana and Ward 2 voted 62% in favor of legalizing. The second highest is Ward 3 that immediately abuts this location. Almost 2/3 of the people living in this area have voted in favor of legalizing marijuana. The City then created a very comprehensive ordinance in 2019.

The applicant originally had interest in a location on Rantoul Street but the City chose another applicant. Before a City signs off on a Host Agreement it needs to be signed off by Police, Fire, Engineering, Health and Planning. It was signed off in 2022 and then it went to the CCC for review who also has a very thorough process. It took them a year to produce the provisional license.

Atty. Alexander stated an informational meeting was held in the Community Room on July 25, 2022 open to anyone within 300' of this location.

Atty. Alexander stated this location is located in the CC zone which is where this use belongs. The applicants are looking for a waiver of the 300' buffer. Ken Clausen in the Planning Department provided an analysis of this request. The location is not visible to the park, there are houses and fences in between.

All other buffer zones are met including 2,000' from any other marijuana retailer and more than 500' from any school or childcare facility.

Atty. Alexander reviewed the criteria for a Special Permit and how this request meets those requirements.

Atty. Alexander provided a petition, for the record, signed by direct abutters in favor of this request.

Atty. Alexander stated this proposal is deserving of approval, it's an area that has indicated favorable opinion of this use and it's the central business district. This end of Cabot Street has been neglected for some time and hopefully this business acts as a catalyst for this area.

Mr. Andrews read a letter into the record from Estelle Rand, Ward 2 Councilor.

Rosemarie Maglio, 30 Pleasant Street addressed the Board and stated she is requesting the Board not grant this marijuana retail use at this site.

Brian Butler, Davis Street stated he has lived there for 33 years. The buffer exists to protect children and he doesn't see how waving it will protect children. Mr. Butler is concerned children will gravitate to the shop and purchases from the shop will gravitate to the park. Mr. Butler stated he doesn't think it's the right location, there are better locations.

Jessica Regalado, 75 Cabot Street stated she is in favor of this Special Permit. She stated she thinks it will be beneficial to the community and that these shops are pretty locked down. Ms. Regalado stated she doesn't think it will pose a risk to children.

Chris Sadkowski, 33 Barlett Street stated they have lived here for 16 years and he stated he was in favor of voting for decriminalizing marijuana but it was not a vote in favor of putting a retailer at 73 Cabot Street within 300' from a park. Chris stated he is also doubtful that such a retailer will raise his property values.

Lisabeth LaFontaine, 19 Bartlett Street stated she is a direct abutter and she has concerns about this request. Ms. LaFontaine stated she feels the neighborhood is residential even though there are businesses in close proximity and that this will negatively impact the whole neighborhood.

Victoria Pearson, 26 Prospect Street stated she is in support of the facility and stated she thinks it will aid in the revitalization of downtown and she doesn't see any danger to children of this area any more than the liquor stores in the area.

Janis Lavine, 9 Fayette Street stated she is in favor of this Special Permit and she thinks it's appropriate to be there, she thinks they did a good job of planning it and setting it up. She frequents Ahern Park walking her dog and she also sees kids there. This summer she hasn't seen very many kids and she thinks it's due to dog owners not picking up after their dogs. Ms. Lavine stated she hasn't seen anyone smoking pot in the park in the 15 years she has been going there. Ms. Lavine stated she has never seen people hanging out at the dispensary she has been going to and that dispensaries are really secure, you can't enter without showing your ID. Ms. Lavine stated she doesn't understand why this is a problem if kids aren't even allowed in the building.

Atty. Alexander stated they sent notice to a hundred neighbors for a community meeting.

Mr. Cosmas asked when the approvals were given by the City and Atty. Alexander stated during the Host Agreement process.

Ms. O'Brien asked if the people presently objecting would oppose to a liquor store and stated there is more security for this type of store.

Mr. Farinella asked if deliveries will affect the accessible parking spaces. The applicant stated they can schedule the delivery times before business hours between 9-10am.

Ms. O'Brien asked if the hours have been determined and Atty. Alexander stated 10-8pm.

Ms. Gougian asked where employees will park. The applicant stated they are in conversations with the new gas station owner for additional offsite parking if its needed.

Mr. Andrews asked if odors are expected outside of the building and does the signage state marijuana or have pictures of marijuana leaves. The applicant stated they will not use the word marijuana, they use the word dispensary. They haven't had any odors in Salem and they do have odor mitigation plans.

Ms. O'Brien asked if lighting and signage has been addressed and Atty. Alexander confirmed and stated it's in the packet. Atty. Alexander stated they need to go before the Design Review Board when the signage is finalized.

MOTION: Ms. O'Brien moved to close the public hearing.

Mr. Cosmas seconded the Motion.

Votes in favor: 5-0 (Andrews, Gougian, Cosmas, Farinella, O'Brien)

Motion carries.

Mr. Cosmas stated he lives in Ward 2 and he has two kids, one of which will be on the bus route mentioned. Mr. Cosmas stated he has zero concerns about his children being impacted by this. There may not be a more restrictive regime than the Cannibas Commission and that is because it's a carve out from Federal Law. Mr. Cosmas stated he would be more concerned about a package store or a store that sells cigarettes. What we are not talking about is not a freewheeling set up, we are talking about a facility with higher security than a bank. The idea that this will somewhat corrupt children needs to be changed because as a Commonwealth and a City we voted in favor of legalizing it. It's a revenue source for the City and it meets the criteria.

Ms. Gougian read the Special Permit criteria.

MOTION: Mr. Cosmas moved to GRANT a Waiver at 73 Cabot Street for the 300' buffer requirement pursuant to Sec 300-122, ¶H due to the proposed marijuana establishment being adequately separated Ahern Park by barriers that prevent visibility of the facility. Ms. O'Brien seconded the Motion.

Votes in favor: 5-0 (Andrews, Gougian, Cosmas, Farinella, O'Brien)

Motion carries.

MOTION: Mr. Farinella moved to GRANT a **Special Permit** at 73 Cabot Street to allow the use of the existing premises as a marijuana retailer and a waiver to allow the establishment within 300' of Ahern Park, in a straight line it is 221.67 feet, however between the Premises and the park there are private residences and a physical barrier of at least one 5-9' fence. The nearest public access to Ahern Park is on Pleasant Street in a straight line from the Premises of 437.76 feet. To walk or drive to the public access along Cabot Street and Pleasant Street is 535 feet, with the condition that the deliveries will not interfere with the accessible parking spaces, subject to the plans submitted.

Ms. O'Brien seconded the Motion.

Votes in favor: 5-0 (Andrews, Gougian, Cosmas, Farinella, O'Brien)

Motion carries.

Alexander & Femino o/b/o John Iltis and Laura Coen-Iltis

requests to issue a **Variance** that was previously issued by the Zoning Board of Appeals by a unanimous decision on September 22, 2021, approved unanimously by the Planning Board on April 26, 2022 and issued an Order of Conditions by the Conservation Commission on June 28, 2023 to allow the property to be divided into 2 lots in accordance with the original subdivision plan for this neighborhood such that Lot 31, where the existing house is located, has 183 feet of frontage, 8,852 sq. ft. of area and a 5.3 foot side yard setback, and Lot 30 would have 50 of frontage, 8,031 sq. ft. of area and a side yard setback of 13 feet where existing zoning calls for 100 feet of frontage, 10,000 sq. ft. of area and a 15 foot side yard setback. The property is located at 14 Jordan Street in the R10 zoning district.

Tom Alexander, Esq. (Alexander & Femino) addressed the Board and stated the original ZBA decision was unanimously approved by this Board in 2021. The proposal went before the Planning Board who also unanimously approved it. An Order of Conditions was issued. The ZBA also granted a 6th month. Atty. Alexander stated the year and a half was up before the applicants received final approvals from the Conservation Commission and so they are here requesting the Board re-issue the Variance so they can move forward with their project.

Mr. Andrews asked if going before the Zoning Board of Appeals is the first step in the request process and Atty. Alexander confirmed.

Ms. O'Brien asked if there have been any changes and Atty. Alexander stated there have been no changes, the house and the lots are the same.

No one spoke in favor or against.

MOTION: Ms. O'Brien moved to close the public hearing.

Mr. Cosmas seconded the Motion.

Votes in favor: 5-0 (Andrews, Gougian, Cosmas, Farinella, O'Brien)

Motion carries.

MOTION: Ms. O'Brien moved to reissue a **Variance** at 14 Jordan Street based on the shape and the location of the existing house on the adjacent lot causing a hardship for the subdivided lot, subject to the plans submitted. Mr. Farinella seconded the Motion.

Votes in favor: 5-0 (Andrews, Gougian, Cosmas, Farinella, O'Brien)

Motion carries.

OTHER BUSINESS

A. Approval of July 31, 2023 Meeting Minutes (Andrews)

MOTION: Mr. Andrews moved to approve the Minutes from the July 31, 2023 Meeting Minutes as written. Mr. Farinella seconded the Motion.

Votes in favor: (Andrews, Gougian, Cosmas, Farinella, O'Brien)

Motion carries.

B. Members available to attend September 27, 2023 meeting (Harris)

MOTION: Mr. Andrews moved to adjourn the meeting at **9:35 pm.**

Mr. Cosmas seconded the Motion.

Votes in favor: (Andrews, Gougian, Cosmas, Farinella, O'Brien)

Motion carries.

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