

**TOWN OF Millbury
Board of Appeals**

Paul Nigosian, Chairman
Robert Simmarano, Vice Chairman
Ken Perro, Clerk
Harold Proodian
Daniel Mezynski
Anna Lewandowski, Alternate member



MUNICIPAL OFFICE BUILDING
127 ELM STREET
MILLBURY, MA 01527

Meeting Minutes

Wednesday, May 31, 2017

7:00 pm

Meeting Schedule:

07:00 pm: Official Call to Order
07:05 pm: Request for a Variance at 5 Forrest Dr., for a side yard setback
07:25 pm: Request Special Permit for a Kennel License at 6 John Street
07:55 pm: Hearing cont. from May 3rd; Request for a multiple Variances at 366R Greenwood St.
10:00 pm: Adjournment

Board of Appeals Board Members Present:

Paul Nigosian (Chairman), Ken Perro (Clerk), Daniel Mezynski, Robert Simmarano (Vice Chairman),
Anna Lewandowski (Serving as Alternate)

Not in Attendance: Harold Proodian

(See attached sheet for abutters who were present)

7:00 PM: Official Call to Order:

Millbury Board of Appeals; Wednesday May 31st, 2017 @ 7:00 pm, with four board members present and Anna Lewandowski residing as the alternate for all three applications. **Paul Nigosian** addresses the hearing; a meeting of Millbury Board of Appeals; we're here for an application for an appeal for a variance for 5 Forrest Drive, a Special Permit for 6 John Street and a continued hearing for 366R Greenwood Street for multiple variances. The hearing was officially opened by **Ken Perro** at 7:05 pm. Having complied with the provisions of Chapter 40A of the General Laws of the Commonwealth of Massachusetts, relative to advertising and notifying abutters, all decisions of this board are final except as provided in Chapter 40A of the Massachusetts General Laws.

7:05 PM:

John Silveri of 5 Forrest Dr., Millbury, Ma 01527 for the property at 5 Forrest Dr., Map# 63, Lot# 6, Book# 25392, Page# 135, Suburban 2 District.

Mr. John Silveri explained to the board that he was looking to replace an existing 20x12' shed with a new shed of the same approximate dimensions (size and height) in the same location. The old shed is built on a concrete slab and would like to have the new one placed on the slab but lifted off the ground. The Millbury Zoning Bylaws section 23.32 requires a minimum of 10 foot side yard setback. Paul Nigosian points out that on Mr. Silveri's application and the letter from Robert J. Frederico these forms do not have listed the footage that exists between the existing shed and the neighbor's property leaving the variance questionable. Mr. Silveri, to his knowledge, thinks there is about two feet between the shed and his neighbor's property. Paul Nigosian explained that the board will come up with a solution once the hearing is closed. Paul Nigosian asked the audience if anyone was there to offer a

statement in regards to Mr. Silveri's request for a variance, there wasn't anyone from the audience to respond. Paul Nigosian then entertained a motion to close the public hearing; Daniel Mezynski made the motion second by Robert Simmarano. The board discusses how the dimensions should read for the variance and in final consultation they decided to go with the shed will be set back of one foot from the lot-line, which is nine feet short of the required ten feet. Ken Perro made a motion to grant the zoning Variance to John and Claire J. Silveri of 5 Forrest Drive, Millbury, Ma as shown on Map 63, Parcel 6 and recorded in Book 25392, Page 135 with Worcester District Registry of Deeds within the Suburban II district Sections 23.32 of the Millbury Zoning Bylaws which requires a minimum yard setback of 10 feet. The shed will be set back one foot from the lot-line, which is nine feet short of the required ten feet, Daniel Mezynski second the motion all members were in favor 5 – 0.

7:25 PM:

Edward H. Mandella III of 6 John Street, Millbury, Ma Map# 11, Lot# 14, Book# 24769, Page# 84, R – 3 District; Mr. Mandella currently owns six dogs and is trying to obtain a license for each, the town of Millbury only allows 3 dog licenses a kennel license is needed to register the other 3 dogs a Special Permit is required.

Edward H. Mandella III explained to the board that he and his wife currently have six dogs three of which are elderly and three younger dogs, the town of Millbury only allows a maximum of three licenses so a kennel license is needed, they do not breed dogs they just have the six they were the grandparents, the parents and two puppies, there is no breeding and there is no kennels, these are small dogs that range from 13 to 22 pounds (1 Mini Dachshund age 15, 2 Chitsu's ages 14 & 11, 1 male Cava chon age 3 and 2 puppies age 2 – probably in the next 3 years they will be down to 3 dogs and not looking to replace). They're all inside only to go out periodically and they come back into the house they don't leave them out to become a nuisance. The animal control officer came out to the house and inspected the house and met the dogs, the back yard is completely fenced in so the dogs don't roam the neighborhood. They've never had any complaints from the neighbors, the dogs a quiet and they take well care of the dogs and that they are a part of the family. Paul Nigosian asked the audience is there were any abutters there that would like to say anything in regards to Mr. Mandella's request.

Abutter Susan Dineen of Marion Ave asked where the Mandella's walked their dogs; Mr. Mandella hasn't walked their dogs for the past 3 years due to the elderly dogs that can't handle the long walks. Ms. Daneen has issues with people in the neighborhood who walk their dogs and don't clean up their excrements. Ms. Daneen also had concerns if the dogs would be a threat if she was to walk by his home and they were outside in the yard and as Mr. Mandella pointed out that these are small dogs and two of them being elderly are of no threat plus when they are outside in the back yard the yard is completely fenced in so there would be no cause for threat. Ms. Daneen was also concerned if Mr. Mandella would be replacing any of the dogs as they pass and again Mr. Mandella pointed out as he did previously that they have no desire to replace the dogs they are just caring for the dogs they have and let the dogs live out their lives as they go along. Ms. Daneen was satisfied with the situation.

Abutter Jeff Grant of 5 Matson Lane spoke on behalf of Mr. Mandella. Mr. Grant lives very close to the Mandella family and didn't even know they had six dogs.

Paul Nigosian entertained a motion to close the public hearing Ken Perro made a motion second by Anna Lewandowski. The board discussed among themselves in regards for the Special Permit dog kennel license and came to a decision.

Paul Nigosian asked the board if anyone would like to make a motion; Anna Lewandowski made a motion to Grant the Special Permit for a Kennel License to Edward H. and Stacy Mandella III of 6 John Street as shown on Map 11,

Lot 14 as recorded in Book 24769 Page 184 with the Worcester District Registry of Deeds within the Residential III Zone Sections 22 – 24, of the Millbury Zoning Bylaws and abide by Chapter 4 of the General Bylaws, Article II Dogs sections 4 – 16 to 4 – 26. Said kennel to be used for Hobby only and not breeding purposes or sale for the six existing dogs and that the special permit will expire 5 years from the date filed; Daniel Mezyuski second the motion all members were in favor 5 – 0.

7:55 PM:

Linda Konisky for 366R Greenwood Street, Millbury, Ma; Map# 27, Lot# 7, Recorded with the Registry of Deeds Book# 55145, Page# 357, Suburban IV District and Aquifer and Watershed Protection Overlay District. Seeking Multiple Variances for; 1) General business and office, 2) Construction and business storage, 3) Warehousing. Representing Ms. Konisky is Amanda Risch of Fletcher Tilton PC.

Paul Nigosian reminded the audience/ abutters to keep the discussion current this is the third hearing in regards to 366R Greenwood Street and past discussions are not necessary the board doesn't need to hear what has already been previously heard just what has currently happened within the past few weeks.

Amanda Risch spoke to the board explaining that at the last meeting, (May 3rd), the board requested that they come back to the next continued hearing, (May 31st), and that they have a more detailed use of the variance that they are requesting. They had previously identified the use variance as light industrial now they are coming back with a more narrowly defined definition; specifically they are requesting three commercial uses that are limited in scope to let allow the existing tenants at the property to continue their businesses.

First: General Business and Office use.

Second: Commercial construction equipment sales and storage.

Third: Ware-housing.

They have removed their request for a vehicle repair shop as a permitted use at the property; additionally they have proposed conditions of approval if this board were to grant the use variance.

First condition; that they would be willing to abide by is that there would be no movement of commercial or construction vehicles of any kind after 9:00 pm until 6:00 am 7 days a week.

Second condition: Ms. Konisky will continue to actively monitor the property to have vigilant screening of any new and present tenants at the property to insure that the town of Millbury doesn't have to spend unnecessary resources in having the building inspector policing the property day in and day out.

Third condition: in consideration of the complaints from the neighbors for the concerns for the back lot of the property they are requesting that long term storage of commercial vehicles would be acceptable to that area so that in the months when construction activity is more limited, especially during the winter, that the tenants could continue to utilize the back lot of the property to park their vehicles, not moving them every day so not creating noise for the neighbors.

Also attending the hearing were several tenants that are presently renting space at the property and the former manager from Hoods Dairy to discuss with the board the importance for their businesses, how the property was utilized when Hood Dairy was on the property and to answer any questions that the board might have.

Ms. Risch also showed to the board members several large poster boards of some photo aerial shots of the property and its surrounding area and neighboring businesses; (Gina's Auction, Massachusetts State Police Facility, Mass Pike, etc.)

Tenant, Michael Kniskern, Black Top Services, 366R Greenwood St; Has been running his business on the property for the past four years it's not a year round business it only runs from the first week of March until the first week of December, he goes to the garage every morning at 6:30 am and doesn't leave any later than 6:00 pm at night, he doesn't use the garage for repairs except for small maintenance of grease and washing of the vehicles. He is using the back lot for the storage of his vehicles.

William Wood former employee of Greenwood Dairy and later Hood Dairy; He was employed at the property for the past 50 – 60 years. Multiple trucks would run in and out of the business, 7 trucks including a tanker to haul milk. After Greenwood Dairy sold to Hood Milk more trucks were acquired including trailer trucks; they would come in at 11:00 at night to unload product into a trailer for storage, they had five distributors of Hood product who would load there every day. They would start loading at 5:00 in the morning and it would go on throughout the day until 6:00 at night. In all that time he doesn't recall anyone having any problems and he doesn't see why it's any different now, it appears there is less traffic going in and out than there was back then.

8:10: Paul Nigosian introduced and Ken Perro read a letter of concerns from Richard & Charlotte Townsend of 364 Greenwood St. (Please see attached letter).

Atty. Thomas Baker representing Mr. & Mrs. Dowe of 366 Greenwood St. Atty. Baker, acknowledging that he wasn't present for the previous hearings and to what was complained about at those hearings but he went out to the property of his clients, Mr. & Mrs. Dowe, they showed him a concrete block that had been moved by somebody, his clients think that it had been moved by Ms. Konisky or one of her agents, it use to be straight but now it's crooked and giving them a hard time parking; he doesn't know if it is an animosity thing but he doesn't think it's his clients imagination. Atty. Baker feels the only basis for a variance has been used in the wrong way in the past and they want to continue to use it in the wrong way, it is not zoned for what is in there now and no one living in the area is happy about it, how can you draft a variance for general business & office, construction sales, storage it's going to be very hard to police as it has been very hard to police over the years, the property still has a value without the light industrial it could be used as residential at some point, there are other ways to develop the property.

Tenant, Merrick Services of 368 Greenwood St. rents on the property and spoke on behalf of Linda Konisky.

Anthony Konisky son of Linda Konisky; spoke on behalf of his late father Mike Konisky and his mother Linda Konisky.

Abutter, David Marcoux of 19 Chunis Ave; his property abuts the field in the back, with the foliage in the summer you can't see anything but come late fall and winter you can see everything, all his equipment, big yellow trucks, trailers, pavers and other construction vehicles. He's expressed concerns as to what this is going to morph into, at one time there had been over 30 cars and trucks most of them unregistered so he wants to know what type of equipment are they going to be storing out there, will they be making a parking lot out of it, these were his concerns.

Abutter, Mary Ward of 15 Chunis Ave; expressed the same concerns as she did in previous meetings.

Abutter, Rick Townsend of 364 Greenwood Street; his property abuts 366R Greenwood Street, his concerns were in regards to Black Top Paving the owner mentioned he doesn't do repairs at the site however equipment does break down and they will need to repair; a few Sunday's ago on Mother's Day they were doing repairs on a truck and as neighbors that's what they are all against; having work done on odd ball days and traffic running in and out.

Abutter, Mark Ward of 15 Chunis Ave; expressed his concerns for the hours and the 7 days a week business hours and he is completely against the variance.

Amanda Risch; assured the neighbors/ abutters that if a variance is granted they promise to safe guard the property and to be vigilant as to who will be renting the business spaces and policing all businesses on the property and that they will be following the requirements and bylaws that are listed through the town.

Anna Lewandowski; asked the abutters, within the past year, if anyone had to call the police in regards to unusual activity taking place on the property.

Abutters, Mr. and Mrs. Dowe; complained their concerns about trucks and vehicles coming in day in and day out.

Abutter, Mary Ward; complained about gun shooting and bow and arrows however this took place over a year ago.

Anna Lewandowski; asked the abutters if they had their choice what would they prefer to have at the property.

Abutter, Holly Mahler of 370B Greenwood Street; is a stay at home mom and has lived at her property for 4 years; she has expressed her concerns that also coincide with the Dowe's as far as the traffic going in and out of the property / driveway.

The board listened to open grievances from the abutters and tenants in their own defense. The board also questioned Amanda Risch in reference to future possibilities in regards to storage in the back lot – boats, trailers, construction equipment, etc.

Paul Nigosian made the motion to close the public hearing; Robert Simmarano made the motion second by Daniel Mezynski all members were in favor 5 – 0.

Robert Simmarano spoke to the galley that he is open to a limited variance.

Ken Perro spoke his opinion for the board's responsibility to decide where this variance should be acceptable.

Paul Nigosian has concerns that with this variance this could change the zoning district. The businesses that are currently there are not zoned for that area. If a variance was to be permitted each new possible business would have to go in front of the board for their own business variances rather than a blanket variance where the board could lose control of what business could be renting on the property. Amanda Risch was against this idea feeling that each application filed could be time consuming and cumbersome.

Anna Lewandowski read from the bylaws what businesses are allowed in that district.

Paul Nigosian read aloud a letter from the building inspector Robert Frederico; (please see attached).

All members agreed what Ms. Risch and Ms. Konisky is requesting is "Spot Zoning".

Ken Perro commented that he was not sure as to how to draft the motion, Robert Simmarano asked Anna Lewandowski if she could compose something as a starting point to find some middle ground. Anna points out to the board in reference to the letter from Robert Frederico the four main issues of the by-law to deny; no proof of hardship, serious detriment to the neighborhood, etc. The board struggled to come to some final decision therefore it was decided to get advice from the town council, Ken Perro had offered to follow through to seek this advice.

Daniel Mezynski made a motion to continue the session and seek advice from the town council second by **Ken**

Perro all were in favor 4 – 1 **Paul Nigosian** was opposed. Next meeting is scheduled for June 28th at 7:00pm.

(For the record the town council was unable to offer advice by June 28th therefore the meeting was rescheduled for July 26th at 7:30pm)

10:00 PM: Adjournment

Paul Nigosian postponed approval of the minutes until the next meeting then entertained a motion to adjourn the meeting; **Ken Perro** made the motion, **Daniel Mezynski** second the motion; carried unanimously 5 - 0.

Respectfully submitted by Nancy Young and submitted to Town Clerk.



TOWN OF MILLBURY

ATTENDEE SIGN-IN SHEET

BOA HEARINGS WEDNESDAY, May 31, 2017

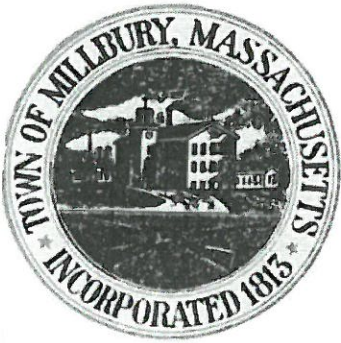
7:05 John Silveri, for 5 Forrest Dr., Millbury, Ma

7:25 Edward Mandella for 6 John St. Millbury, Ma

7:45 Linda Konisky for 366R Greenwood St., Millbury

PLEASE PRINT NAME & HEARING YOU ARE ATTENDING

John Silveri	7:05	John Silveri 5 Forest Dr.
Ed Mandella	7:25	
Mike Kniskern		366 R Greenwood St. Millbury
CAMERON HOLLANDS		18 Elm St - MILLBURY
RICHARD TOWHSEND		364 GREENWOOD ST Millbury
Amanda Risch	7:45	Fletcher Hilton
Jeff Grant		5 Matson Ln
Candice Merrick	7:	368 Greenwood St
Jeff Merrick		268 Greenwood St
Linda Konisky		32 Briery Circle
Anthony Konisky		11 Warren St Millbury
William Wood		GREENWOOD ST
Joseph White		JFK MEMORIAL DR.
Matthew y. Dewe		366 Greenwood St.
Tom Baker, A#		137 Linwood, with us in
Thyself E/M		366 Greenwood St.
Mark David & Holly Mahler		370 B Greenwood Street
Jonathan Cardwell		12 Church Ave millbury MA



TOWN OF MILLBURY

ATTENDEE SIGN-IN SHEET

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PLEASE PRINT NAME & HEARING YOU ARE ATTENDING

Susan Dineen 4 MARION AVE - MR. MANDELLA - 6 JOHN ST.

Mitchell Heckler 12 Churnis Ave

Mary Waul 15 Churnis Ave - My Mark Waul

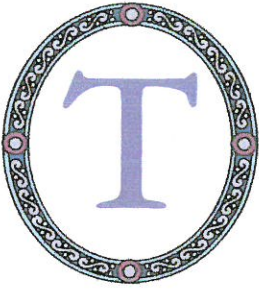
Mel Waul 15 Churnis Ave

Elain Maroney 19 Churnis Ave

DAVID R. MARCOU 19 CHURNIS AVE

Brenda Kelosis 18 Churnis Ave

Patricia Bolles 365 Greenwood



April 24, 2017

Millbury Board of Appeals
127 Elm Street
Millbury, MA 01527

Attn: Paul Nigosian, Chairman

This letter is in regards to a public hearing to be held on Wednesday, April 26, 2017 at 7:30 PM to act on a petition from Linda Konisky of 366 R Greenwood St. relative to a variance in the zoning bylaws for light industrial uses of said property.

We are unable to attend the public hearing but were advised by you to put our thoughts on the matter in writing and leave at the Town Clerk's Office.

We live at 364 Greenwood Street which is next door to the property in question. Over the past thirty-five years we have witnessed numerous businesses operating out of said property – a Hood distributorship whose tractor trailers would back into the driveway after 11 PM using the back-up alarm each time, an oil tank and mercaptan removal business, an auto detailing business, and a couple of auto repair businesses. Currently there is an auto repair shop and blacktop/paving company operating on the property. These businesses, by their very nature, generate noise and air pollution, are an eyesore, and most likely would reduce our property value should they continue.



While Linda Konisky has assured us that any future businesses next door would be “mostly long term storage only”, our main concern is, if the variance in the zoning bylaws to light industrial uses is approved and said property is then sold, we would have little or no control over what types of businesses operate on said property.

We, therefore, are opposed to approving the request for a variance to light industrial uses for the property at 366 R Greenwood Street.

Thank you for the opportunity to express our feelings in writing regarding the matter. If you have any questions please do not hesitate to contact us at 508-756-1704.

Most sincerely,

Richard & Charlotte Townsend
364 Greenwood Street
Millbury, MA 01527
Email: Rickshaw54@aol.com


Richard S. Townsend

Charlotte L. Townsend

Email from Robert Frederico Building Inspector

Here are my comments to the submission below.....

*Fill-in-the-blank variance...

I would advise the Board and the Town to be responsible for the form and content of any official determination, not the applicant.

Given the size of the land, and the proposed multiple uses for that land, this would appear to be a request for 'spot zoning'.

*Page 4, item 2

The third building was built as an accessory structure to a residence in 2004. The application paperwork specifies use of a personal nature. Over the years, the use of the building has 'morphed' into a commercial use.

The statement that the vegetation buffers the abutters is false. In the winter season, there is nearly clear visibility through the back yards of the abutters.

The statement proposes that the site is an acceptable distance from abutters. The abutters' homes, in fact, average less than 50 feet from the proposed activity.

The statement speaks to the historical use of the property. However, the legal use of the property ended when agricultural (and associated agricultural uses) were converted to uses other than agricultural or residential.

Other than a brief and vague narrative, the applicant has not provided a clear and specific use for the property.

The applicant asserts that the intent of the by-law is appropriate for the proposed (and current) uses. The S-IV zone does not allow for this type and level of activity.

*Page 4, item 3

The statement asserts that there's a precedence for use variances in Millbury. Due to the level of past activity, proposed activity, and the complaint level from the abutters and others in the neighborhood, I believe that this case must be discussed and decided on its own merits, and not that of others.

*Page 4, item 5

The applicant states that appropriate facilities will be provided. It is impossible to determine what facilities will be provided, since there is no clear and specific use proposed. However, if the Board approves this variance, the property will need site plan review from the Millbury Planning Board, along with special permits as required by the Millbury Zoning By-laws. Special permits may be required from the Board of Appeals, and will require permissions from the Millbury Conservation Commission. Additionally, there are prohibited uses as listed in Section 47 (aquifer protection overlay district).

The Massachusetts Zoning Code, Chapter 40A, section 10, states that a variance may be granted *if all* of the following criteria are met:

- (a) A literal enforcement of the provisions of this by-law would involve a substantial hardship, financial or otherwise, to the petitioner or appellant.
- (b) The hardship is owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located.
- (c) Desirable relief may be granted:
 - (1) Without substantial detriment to the public good; and
 - (2) Without nullifying or substantially derogating from the intent or purpose of this by-law.

- (a) Massachusetts courts are not sympathetic to the claim of economic or competitive hardship. The Massachusetts Supreme Judicial Court states: "We note additionally that 'financial hardship to the owner alone is not sufficient to establish 'substantial hardship' and therefore justify a variance".
- (b) Hardship regarding use of the land is mute. The land occurs in the aquifer protection overlay district , and does not allow the proposed and current use of the land. Due to the outright prohibitions, I believe that this hardship is not met.
- (c) The continued use is detrimental to the public good, as evidenced by the long history of complaints from abutters and neighbors.
- (c) The existing and proposed use of this property is contrary to the intent or purpose of this by-law(section 23).

My belief is that the applicant has not met the requirements for a variance, and that continued use of the property in its current form is illegal.

Robert Frederico
Town of Millbury
Inspector of Buildings
Zoning Enforcement Officer
127 Elm St.
Millbury, MA 01527
508-865-0438

SUBURBAN IV DISTRICT BY-LAW

One family dwelling (other than a mobile home); boarding lodging or tourist homes; residential use in accordance to section 47; permitted community services uses of school or college, religious sectarian or denominational buildings are uses; nursing, convalescent rest homes or hospital; cemetery; municipal use not elsewhere more specifically cited institutions; other permitted uses; agricultural, horticultural floricultural uses; earth removal, florist shop, milk processing plant, parking to serve a permitted use; standard or par 3 golf course; permitted accessory uses are home occupation in accordance to section 41, roadside stand for goods principally produced on the premises, parking to serve as a committed use but not including more than one commercial vehicle or any construction equipment or any truck over 1 and 1 ½ ton; temporary structure to be used only as temporary construction offices in relation to and in conjunction with a current construction project and to be removed in the case of building construction up on the final issuance of all occupancy permits or in the case of other types of construction projects upon the completion of all construction work in either case the temporary structure shall not remain on the property for more than 24 months. Other customary accessory uses by-laws are 42383 article 18; other things veterinarian animal hospital, kennel; non-profit club or lodge; public utility without service yard; accessory dwelling; assisted living facility;

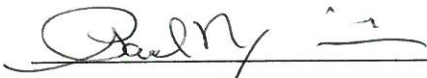
Town of Millbury Board of Appeals

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MUNICIPAL OFFICE BUILDING
127 ELM STREET
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Board of Appeals Approval Signatures for Meeting Minutes,



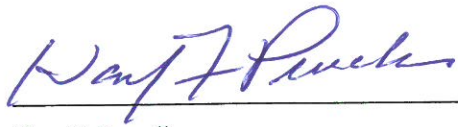
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