

**ZONING BOARD OF APPEALS**

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WALTER B. ADAMS
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January 7, 2021

7:00 pm

Remote Public Hearing

Zoning Board of Appeals Members Present: J. Randolph Becker
Walter B. Adams
Derek B. Redgate
Robert W. Levy

ZBA 2020-64, WELLESLEY PARK LLC, 140-148 WESTON ROAD

Present at the public hearing were Victor Sheen, Wellesley Park LLC, Ben Wilson, Architect, Bargmann, Hendrie & Archetype, Inc., and Susan Spratt, P.E., McKenzie Engineering.

Mr. Sheen said that the request is for Site Plan Approval (SPA), a special permit for retaining walls in the setback, and a Variance for building height. He discussed the meeting process with the Design Review Board (DRB), Project of Significant Impact (PSI) and Residential Incentive Overlay District (RIO) before the Select Board. He said that the project was reduced from a Chapter 40B project.

Mr. Sheen discussed the topography of the site, the elevation along Weston Road and calculation of the building height. Mr. Wilson displayed elevation drawings and further discussed the topography. He said that the building has not changed since it was reviewed by the Select Board or other boards. He said that the building fills in a depression that was excavated out of the site. He compared with the building height with 153 Weston Road, which is across the street.

Mr. Sheen discussed the need for a special permit for retaining walls. He said that retaining walls along the northern property line and portions on the west and southern portions are within 10 feet of the property line and higher than four feet. He said that the retaining walls were reviewed under DRB, PSI and RIO and the neighborhood group.

Mr. Sheen discussed responses to the Town's Engineering Department's comments regarding a post construction survey to establish location and ensure that there are no encroachments on town properties.

Mr. Wilson discussed the trellis feature and entry to the driveway.

Ms. Spratt discussed notes added to the plans for clarifications to construction, night work, and utility connections to Weston Road.

Mr. Wilson discussed updated detail Plan C9-5.

Mr. Sheen discussed additional landscaping around the 140 Weston Road property. He discussed language that was added to the Construction Management Plan (CMP) for proper notification for noisy site work. Mr. Wilson said that most will be drilled and set rather than pile driven. Mr. Sheen said that they worked with the Engineering Department.

Mr. Becker discussed the 140 Weston Road property. He asked about the condominium association. Mr. Sheen said that 140 Weston Road will be part of the same condominium association as 148 Weston Road, with all of the benefits.

Mr. Redgate asked about building height. Mr. Wilson said that it will be 47 feet. Mr. Redgate questioned why zoning relief was not addressed when the Developer worked with the town. Mr. Sheen said that the overall height of building had not changed since their discussions with the Select Board, DRB and RIO processes. He said that grading of the building was shifted, based on comments. He said that they have worked with the town and the neighborhood and there is nothing intentional to push above and beyond the program agreed to by town. He said that the current proposal is consistent to what was presented to the Select Board and approved by town meeting. He said that the trigger of the variance is part of the Chapter 40A process and is due to the natural topography and excavated area. Mr. Wilson said that six months ago, the entire building was five feet lower in the site. He said that recommendations from the DRB and RIO reviews was to bring the building up to fit the site.

Mr. Becker asked about Planning Board or DRB participation with the Select Board and the neighborhood. Mr. Sheen said that the initial group was with the neighborhood and the Select Board. He said that the former Planning Director, Michael Zehner, made a commitment to work through the Chapter 40A process for a cooperative design process to better fit the topography and the neighborhood. He said that the current proposal was the result of a two year effort.

Mr. Redgate questioned whether the height was an oversight. Mr. Sheen said that the massing of the building and the underground garage did not change from what town meeting approved.

Mr. Redgate asked if the garage level is lower than the sewer in Weston Road. Ms. Spratt discussed a gravity connection from the building to Weston Road. She discussed pumping up to the first floor from basement level. She discussed working with the DPW. Mr. Sheen said that it will be further coordinated with DPW during the building permit application process

Mr. Becker asked if there will be any excavation around the wall during the construction sequence. Mr. Wilson discussed installation of H piles on the property line and casing set back from the property line. Mr. Sheen said that a commitment was made to adjust the location of the H-piles to allow casing to be completely on 148 Weston Road property. He said that they committed to doing a survey on completion to show no encroachment on town or neighbors' land. Mr. Wilson said that the concrete casing will not extend beyond the top of bedrock.

Mr. Becker asked about tree protection in the CMP. Mr. Sheen discussed commitments that were made regarding site excavations and installation of the retaining walls. He said that they will have a survey of abutting trees done and an arborist will be on site. He said that temporary irrigation will be coordinated with

the arborist. Mr. Wilson discussed precautions when roots will be cut for the main retaining wall on the north side where the driveway dips.

Mr. Becker asked if any member of the public wished to speak to the petition.

Mr. Sheffield discussed enhancements to define the entry.

Mr. Redgate moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to approve a special permit for retaining walls that are four feet or greater in height within ten (10) feet of the property line, subject conditions that construction does not require excavation on abutting property and there is minimal disturbance to the abutting property, and made findings that the retaining walls are otherwise in compliance with the provisions of Section 22D of the Zoning Bylaw; that the retaining walls will not adversely impact adjacent property or the public; that the report of the DRB has been received and the retaining walls are consistent with that report; and the proposed retaining walls are the minimum structures necessary to allow the subject property to be reasonably utilized.

Mr. Sheffield voted aye.

Mr. Redgate voted aye.

Mr. Becker voted aye.

Mr. Becker moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to grant a variance for the height of building and make a finding that literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the petitioner owing to circumstances relating to topography of such land or structures, especially affecting such land or structures but not generally affecting the zoning district in which it is located; and the hardship has not been self-created; and desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

Mr. Sheen said that the final set of plans approved by the ZBA will be the controlling documents. He said that the Development Agreement will be amended.

Mr. Sheffield voted aye.

Mr. Redgate voted aye.

Mr. Becker voted aye.

Mr. Redgate moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to close the public hearing.

Mr. Sheffield voted aye.

Mr. Redgate voted aye.

Mr. Becker voted aye.

Mr. Becker discussed new procedures that the Board will follow for regular public hearings regarding completeness of applications.

ZBA 2021-01, 187-189 WALNUT STREET LLC, 6 WILSON STREET

The Board discussed the completeness of the application. He said that the property is located in a Wetlands Protection Area. He said that the Applicant appeared before the Wetlands Protection Committee on four occasions. The Chairman said that the Board likes to have documents from the WPC beforehand but has

approved decisions subject to conditions that the documents are submitted. Mr. Levy said that he would like to see more to get an idea of what is transpiring with the WPC and how far along they are with the process and what conditions they may be imposing. He said that the ZBA prefers to be the board of last resort. The Chairman said that the hearing can be continued if testimony proves to be insufficient. He recommended that the public hearing be opened.

Present at the public hearing were Stanley Brooks, Esq., Marc Charney, homeowner and manager of 187-189 Walnut Street LLC, Paul Worthington, Architect, and Paul Beaulieu, Field Resources.

Mr. Brooks said that they met with the WPC tonight, who voted unanimously to approve a draft Order of Conditions, subject to conditions. He asked that the Board add a condition to its decision to require delivery of a final Order of Conditions and compliance with it.

Mr. Brooks said that the proposed structure is for Mr. Charney, who has lived in the neighborhood for a number of years and wants to stay there. He said that the lot is an irregular reverse flagpole shape with the flag part fronting on Wilson Street and the pole part on the easterly side bumping into the Brook Path. He said that at 14,400 square feet, it is oversized for the district. He said that the buildable flag area at the front is 8,700 square feet. He said that they lose 6,000 square feet at the back of the lot that is restricted by Wetlands and is not wide enough to do anything with.

Mr. Brooks said that the left rear corner of the lot abuts the side yard of the property at 50 Wellesley Avenue, with a 48 foot common lot line. He said that in accordance with Section 19B of the Zoning Bylaw, that area at the common lot line becomes a side yard where 20 feet is required rather than 10 feet for a rear yard setback.

Mr. Brooks said that the existing single family house is outdated. He said that the property is located in a 10,000 square foot Single Residence District where approximately 42 percent of the land area is unusable. He said that a variance was granted in 1979 to enclose the front porch and allowed it to bump into the front yard setback.

Mr. Brooks said that the proposed structure will be fully compliant except for the setback at the rear of 10.1 feet from the lot line at 50 Wellesley Avenue. He said that the side facing garage has a 30 foot setback which encroaches into the required 20 foot setback along 16.97 linear feet at the far rear corner of 50 Wellesley Avenue. He said that the corner of the garage will be 85 feet away from the closest portion of the house at 50 Wellesley Avenue. He said that a total of 234 square feet is proposed to be within the side yard setback area at the rear of the property at 6 Wilson Street.

Mr. Brooks said that they looked at a number of options to see if this could be done without the need for a variance and determined that this is the best option that fits in with neighborhood. He said that the owners at 50 Wellesley Avenue and all of the immediate abutters had a chance to review the plans. He said that the Harts at 50 Wellesley Avenue and the neighbors at 2 Wilson Street told Mr. Charney that they support the plans.

Mr. Brooks said that the proposed infiltration basin was reviewed by the WPC. He said that the Planning Board's concerns seemed to be based on the proposed structure being subject to Large House (LHR). He said that TLAG for the proposed home will come in under the 3,600 square foot threshold.

Mr. Brooks said that the request is for a variance for 234 square feet into the side yard that is the rear yard of this property. He said that the lot shape is not self-created, affects this property in particular and is not common in the Zoning district, and desired relief can be granted without substantial detriment to the public good, without nullifying or derogating from the intent or purposes of the Zoning Bylaw, and literal enforcement of the Zoning Bylaw would create a substantial hardship for any owner of this lot. He said that the structure will be fully compliant except for the setback.

Mr. Levy asked for the TLAG calculation. Mr. Becker said that it is 3,579 square feet.

Mr. Levy asked about proposed installation of air conditioning (ac) condensers. Mr. Brooks said that they will be outside of the setback. Mr. Beaulieu said that they will be on the right side of driveway, left of the house. Mr. Brooks said that the existing left side yard is 23.6 feet and the proposed left side yard setback will be 23.4 to the ac units.

Mr. Levy said that plan showing the front setback with respect to the 500 Foot Rule does not show the abutting houses. Mr. Beaulieu said that a note on the plan establishes 8 Wilson Street as the controlling front yard setback. He said that they will submit a 500 Foot Rule Letter to the Building Department. Mr. Levy said that the Board can find that it makes no determination on the 500 Foot Rule and that it is solely up to the discretion of the Building Inspector.

Mr. Beaulieu discussed changes from the original plans that were submitted and the revised plans. Mr. Levy confirmed that there were no changes to the footprint.

Mr. Becker discussed the TLAG plans and a 500 square foot difference between the floor plans. He asked where the garage area is included. Mr. Worthington said that he separated the garage as a separate item. Mr. Brooks display TLAG and discussed the calculations.

Mr. Levy said that the right setback on the north side of the property will be 20 feet. Mr. Beaulieu acknowledged the danger of being so close. He discussed staking and pinning several times prior to the walls going up.

Mr. Becker reading the Planning Board recommendation.

Mr. Levy discussed comments from the DPW. Mr. Adams said that a drainage plan was submitted, dated December 16, 2020. Mr. Beaulieu said that the plan was reviewed by the WPC. Mr. Charney said that a Stormwater Report was recently submitted to DPW. Mr. Beaulieu discussed the features of the lot, water runoff and stormwater system design. Mr. Charney said that all roof water goes underground, as detailed in the 56 page report from Highpointe Engineering. Mr. Becker said that the Board is relying on the WPC to deal with the water issues.

Mr. Levy said there will be there is almost double the impervious surface proposed. He discussed inserting a condition that there will be no increase in off site runoff. Mr. Beaulieu said that the WPC requires a five percent reduction.

Mr. Becker asked if there was any member of the public who wished to speak to the petition.

The Board discussed granting a variance. Mr. Adams discussed concerns about piecemeal submittals, no record of neighbors' support and building right up to the setback lines. Mr. Levy said that the existing wetlands do not drive the hardship. The Board members agreed that the lot has a pork chop shape.

Mr. Levy moved, Mr. Becker seconded the motion, and the Board voted unanimously to grant a variance and making a finding that literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the petitioner owing to circumstances relating to the shape of such land, which does not generally affect the zoning district in which it is located, the hardship has not been self-created, and desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw, subject to conditions that a final Order of Conditions that is not subject to appeal or contest is submitted and that the conditions are complied with. The Board said that the relief granted is for the 10.1 foot setback at the rear of the property.

Mr. Levy voted aye.

Mr. Adams voted aye.

Mr. Becker voted aye.

ZBA 2021-02, JORGELINA ABBATE-VAUGHN, 60 CEDAR STREET

The Board discussed application completeness. The Chairman said that the height of the structure shown on the plan was not shown as calculated from average grade. He said that no TLAG or information relating to compliance in a Water Supply Protection District (WSPD) was submitted. The Board discussed continuing the hearing to February 4, 2021.

Mr. Becker said that the Applicant needs to explain what happens to runoff from impervious surfaces in a WSPD.

Scott Vaughn said that he worked with the Planning and Building Departments since last year. He said that he provided TLAG information but was unaware of the need for provide information for the WSPD. He said that the proposed addition is conforming. He said that the existing house has a 19.7 foot setback, which is less than the 20 foot requirement. He said that there will be no detriment to the community and the structure will not be changed to be more nonconforming. He said that they will submit a drainage plan.

Mr. Redgate asked that building height from average grade be added to the plans.

Mr. Levy moved, Mr. Redgate seconded the motion, and the Board voted unanimously to continue the hearing to February 4, 2021.

Mr. Redgate voted aye.

Mr. Levy voted aye.

Mr. Becker voted aye.

ZBA 2021-03, THOMAS KEISER, 38 INVERNESS ROAD

The Board discussed completeness of the application. The Chairman said that the locus of the addition lies within the Wetlands Protection area. He said that no information was submitted to address that. Mr. Keiser said that they went through the Wetlands process and got a Negative Determination in late November.

Present at the public hearing were Tom and Vicky Keiser, the Petitioner, and John Chapman, Architect.

Mr. Keiser said that the request is to modify a variance that was granted in 1987 for an addition on the back of the house that was nonconforming on the right side. He said that they are asking to put a one story sunroom behind that on top of brick patio and a little bit further away from the side lot line.

Mr. Becker said that the area is nonconforming at 19,280 square feet in a 20,000 square foot Single Residence District, and the house is nonconforming on both sides. He said that the existing setback on the right side is 17.9 feet and the proposed addition will be 19.1 feet.

Mr. Adams asked if the proposed addition could have been moved over less than one foot east. He said that they still would have to come before the Board because of the property's Zoning history. He said that the goal of the Zoning Bylaw is to make properties more conforming. Mr. Chapman said that the addition is designed symmetrically on the existing gable. He said that taking 10 inches off on one side would mean that they would have to take 10 inches off of the other side and they would lose substantial space in the room. He said that it is a single room on the back of house.

A Board member discussed modifying the variance.

Mr. Becker said that the proposal is for a small addition that is less nonconforming than the existing house. Mr. Adams said that the house is located on a large property with a lot of space and although the setback is nonconforming, the adjacent property on that side has a lot of land and screening. Mr. Becker said that even with the addition, the TLAG will be well below the trigger for a 20,000 square foot Single Residence District.

Mr. Redgate asked if the brick patio is the same size as the addition. Mr. Keiser said that it is slightly smaller.

Mr. Becker asked if there was any member of the public hearing who wished to speak to the petition.

Mr. Becker read the Planning Board recommendation.

Mr. Redgate said that because of the brick patio, there will be no increase in impervious surface with respect to wetlands and the WSPD.

Mr. Becker moved, Mr. Redgate seconded the motion, and the Board voted unanimously to modify the variance, subject to a condition that a copy of the Negative Determination from the Wetlands Protection Committee be submitted.

Mr. Redgate voted aye.

Mr. Adams voted aye.

Mr. Becker voted aye.

ZBA 2021-04, JULIEN GRANT, 74 LEIGHTON ROAD

The Board discussed completeness of the application. The Chairman said that the entire property is located in the riverfront area, subject to the Wetlands Protection Act. He said that the Board received a Negative Determination of Applicability from the Wetlands Protection Committee. He said that lot coverage was not shown on the plot plan but the screened porch does not change the footprint.

Present at the public hearing was Julien Grant, the Petitioner. He said that the property needed a lot of renovation. He said that the request is to place two air conditioning (ac) condensers next to the porch. He said that there is an existing three season porch that he is requesting to replace sliding glass doors with part wall and part windows. He said that there is an existing sliding glass door that will not change. He said that the footprint of the house will not change.

Mr. Adams asked if the condensers could have been placed somewhere that is not in the setback area. Mr. Becker said that he did not believe that the condensers are in the setback area. Mr. Grant said that it is a triangular lot. He said that they could move the condensers toward the street where they would be more visible but that would be worse for the neighborhood and not what they want to do. He said that they prefer to put the condensers on the side of the house. He said that this property does not have a rear yard with a smaller setback because it is a triangle. Mr. Becker said that the left lot line is zero length and the leg of the triangle is the rear lot line. He said that the setback from the rear lot line is 10 feet and the proposed setback is 13 feet. Mr. Redgate said that the property abuts town land rather than a residential lot. He said that in this situation, it is a rear yard that does not need a variance because the abutting property is town land that will never be developed.

Mr. Becker said that the action before the Board is not for a variance for the setback of the ac condensers but a special permit for work on the porch because it is an undersized lot. Mr. Grant said that the footprint will not change. He said that the sliding glass doors are damaged and will be replaced with windows and walls. Mr. Grant said that the Building Department told him that the proposed ac condensers were located in the side yard. Mr. Becker discussed having a rear line that abuts another residential property that would cause it to be the side yard dimension, not the rear yard dimension.

Mr. Redgate said that the porch is already part of the structure. Mr. Adams said that the proposal is to create solid walls. Mr. Grant said that it is an enclosed porch with sliding glass doors. He said that it is not heated. Mr. Becker said that heating the porch could change the TLAG calculation slightly.

Mr. Becker read the Planning Board recommendation.

The Board discussed rear versus side yard. Mr. Becker said that a variance could be based on the shape of the lot. Mr. Adams discussed a rear yard being opposite the front door. Mr. Becker discussed the Zoning Map only applying to residential and general residential districts, 10,000 and 15,000. He said that he did not think that park land would trigger the side yard/rear yard switch. He said that it did not seem reasonable to stand in the street and look at the sloping line that is on the opposite side from the front door and call that a side yard. He said that this does not fit directly with the bylaw. He said that he was willing to find that this is a rear lot line and the shown location of the ac condensers already complies with the bylaw. Mr. Redgate agreed. Mr. Adams confirmed that the property abuts Fuller Brook park land. He said that it does not appear to be designated as anything on the Zoning Map.

Mr. Becker said that the Board should make a finding that the line at the back is a rear yard and that the location of the ac units at 13 feet from the rear lot line complies with the bylaw. He discussed granting a special permit for the undersized lot and work on the porch where there will be minimal change.

Mr. Becker asked if any member of the public wished to speak to the petition.

Mr. Becker read the Planning Board recommendation.

Mr. Adams moved, Mr. Redgate seconded the motion, and the Board voted unanimously to grant a special permit and make a finding that the property line at the rear of the property, opposite the front door, is the rear property line and therefore, a variance is not required, and that the proposed alteration of the structure on the left side of the property, to what was being called a porch, is not substantially more detrimental to the neighborhood than the existing nonconforming structure.

Mr. Adams voted aye.

Mr. Redgate voted aye.

Mr. Becker voted aye.

ZBA 2021-05, ANITA SPIGULIS DESNYDER, 9 DURANT ROAD

The Board discussed completeness of the application.

Present at the public hearing was David Himmelberger, Esq., representing Anita Spigulis DeSnyder, the Petitioner.

Mr. Himmelberger said that he was previously before the Board with a petition that was withdrawn without prejudice. He said that TLAG for the previous proposal was 4,581 square feet in a 10,000 square foot Single Residence District, on a 9,484 square foot lot in a Water Supply Protection District (WSPD). He said that the design was scaled down and reduced in size to a TLAG of 3,961 square feet, which is slightly over the 3,600 square foot threshold for the district. He said that the height was dropped from 31.79 to 28.03 feet. He said that they believe that they have addressed the Board's concerns with regard to the size of the building. He said that they went back to the Historical Commission for a revised waiver and it was granted. He said that two proposed infiltration systems will take all of the runoff from roof drains and the driveway. He requested that the Board find that the proposed project, which is otherwise fully compliant, will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Mr. Adams said that the proposed project responded to the comments of the Board. Mr. Becker said that lot sizes and living areas are substantially smaller on Durant Road than on Parker Road. He said that what is proposed here would make it the largest house on Durant Road but not out of proportion with the houses on Parker Road. He said that it will be a fully compliant structure except for lot size. He questioned how that would be substantially more detrimental to the neighborhood. Mr. Adams said that the lot is deficient by 516 square feet. He said that there is a desire to have more living space in homes in all communities. Mr. Redgate said that if the lot was 516 square feet bigger, it would have to go for Large House Review (LHR). He discussed inserting a condition for landscaping that includes screening.

Mr. Becker read the Planning Board recommendation.

Mr. Becker asked if any member of the public wished to speak to the petition.

Mr. Adams moved, Mr. Redgate seconded the motion, and the Board voted unanimously to approve a special permit and make a finding that the proposed structure shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, subject to a condition that landscaping and screening be provided.

Mr. Adams voted aye.

Mr. Redgate voted aye.

Mr. Becker voted aye.

ZBA 2021-07 21, GEOFFREY WATTS, 21 ABERDEEN ROAD

Mr. Becker said that the rear yard depth is shown to the steps, which are exempt from setback requirements. He said that the setback should be shown to the corner of the deck, which is further away from the lot line. He said that any decision that Board makes regarding this petition involves a nonconformity that gets better, not worse.

Present at the public hearing was David Himmelberger, Esq., representing Geoffrey Watts, the Petitioner. Mr. Himmelberger said that the request for a special permit to enlarge an existing nonconforming deck on a nonconforming house with less than required rear and side yard setbacks, on a 6,735 square foot lot in a 10,000 square foot Single Residence District. He said that the increase in deck size is 132 square feet. He said that the project was reviewed by the Wetlands Protection Committee (WPC). He said that the property abuts Fuller Brook Park. He said that the WPC issued a Negative Determination of Applicability. He said that this is a triangular shaped lot with its closest rear yard setback at 3.3 feet at the back left corner of the house. He said that the setback will be better than 4.7 feet to the corner of the deck. He requested that the Board make a finding that the proposed structure will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Mr. Becker asked if any member of the public wished to speak to the petition.

Mr. Redgate said that the driveway goes significantly onto town land. He asked if there is a way to correct that. Mr. Himmelberger said that it is a very useful piece. He said that they went to the WPC and they had no issue with it. He said that the preference is to keep it. Mr. Redgate confirmed that the area is used to turn cars around. He said that he did not object to keeping it as is.

Mr. Becker read the Planning Board recommendation.

Mr. Adams moved, Mr. Redgate seconded the motion, and the Board voted unanimously to approve a special permit and make a finding that the proposed structure shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Mr. Adams voted aye.

Mr. Redgate voted aye.

Mr. Becker voted aye.

As there was no further business to come before the Board, the hearing was adjourned at 10:50 pm.

Respectfully submitted,

Lenore R. Mahoney
Executive Secretary