

**ZONING BOARD OF APPEALS**

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April 1, 2021

7:30 pm

Remote Public Hearing

Zoning Board of Appeals Members Present: J. Randolph Becker  
Robert W. Levy  
David G. Sheffield

Mr. Becker, Chairman, discussed the format of the meetings, a public hearing for ten petitions and a business meeting for the Board to consider whether a request for a determination whether proposed changes to an approved project are a minor modification that do not require a public hearing; and six petitions, the documentation for which was received after the agenda for the April 1, 2021 public hearing was full. He said that those petitions will be continued to May 6, 2021.

**PUBLIC HEARING****ZBA 2020-73 MICHAEL MCCULLOUGH, 11 ELMWOOD ROAD**

Present at the public hearing was David Himmelberger, Esq. representing Michael McCullough, the Petitioner. He said that this matter was last heard on January 21, 2021, which was the second hearing held on this matter. He said that the Board raised continuing concerns regarding the appearance of the addition. He said that the Applicant submitted further revisions to address the concerns. He said that the left side of the expanded garage was pulled to the minimum for a two car garage and now has a proposed left side yard setback of 13 feet, where previously it was sought to be 11 feet. He said that the shed dormer on the left side of the garage roof was eliminated and the direction of the roof was reoriented to be consistent with the original house. He said that they raised the roof to match the height of the original house. He said that an eyebrow was placed over the garage door to decrease the prominence of the gable above the garage. He said that the gable windows are in line with the existing dormers. He said that they submitted revised elevations and a sketch to indicate what it will look like. He said that they think that this is a much superior appearance from the street. He said that it narrows the footprint by two feet. He said that revised TLAG will be 3,664 square feet, which is 64 square feet above the trigger in a 10,000 square foot Single Residence District. He said that the Board requested that the plot plan be revised to show the dimensions of an existing shed and gazebo. He said that the Petitioners believe that they have addressed the Board's earlier concerns. He said that a significant number of neighbors wrote in expressing strong support. He said that of the 14 homes in the immediate vicinity only two have conforming side yard setbacks, the average being 12.5 feet. He said that the request is for 13 feet. He requested that the Board make a finding that the requested relief will not be substantially more detrimental to the neighborhood than the pre-existing nonconforming house and lot.

Mr. Levy said that it appears that one of the air conditioners (ac) is 16.1 feet from the side yard and the other is 10 feet on the easterly elevation. Mr. Himmelberger said that the existing unit that is adjacent to the existing structure has a setback of 16.1 feet and the intention is to relocate it to be 10 feet from the property line. He said that the expanded plot plan with additional landscaping shows arbor vitae to be added in that area. He said that existing mature arbor vitae screen the area where the proposed ac will be relocated to. He said that the order of magnitude of quiet from the new unit is 20 decibels lower than the existing unit. Mr. Levy said that it may be time for Town Meeting to revisit the noise bylaw. He asked if there was any effort made to try to locate the ac unit some other place. Mr. Himmelberger said that this was the best location based on lengths of runs and location of existing ducts in the house and the air handler unit.

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

Mr. Becker said that the Board received significant input by email and letter. He asked if any member of the public wished to speak to the petition.

Mr. Becker said that the Board asked for some of the setback to increase and got it. He said that he would accept what was proposed in terms of the setback.

Mr. Becker said that the Planning Board recommendation was not updated.

The Board discussed the need for a variance versus a special permit for the ac unit. Mr. Levy said that the existing unit is located in the setback area.

Mr. Himmelberger said that the Landscaping Plan shows an existing six foot tall cedar privacy fence, existing shrubs and mature plantings and 10 foot tall arbor vitae in the immediate vicinity of the relocated ac. He said that a proposed fence will come back from the deck along the property line.

Mr. Levy moved, Mr. Becker seconded the motion, and the Board voted unanimously to make a finding that the proposed renovation, including the relocation of the ac condenser, will not be substantially more detrimental to the neighborhood than the existing nonconformities and approve a special permit, subject to conditions that the existing fence be extended past the relocated ac unit and that existing vegetation and plantings around the relocated ac unit be maintained.

Mr. Levy voted aye.

Mr. Becker voted aye.

Mr. Sheffield voted aye.

#### ZBA 2021-24, TIMOTHY EATON & CATHERINE DYER, 58 UPSON ROAD

Present at the public hearing were Katie and Tim Eaton, the Petitioner, and Scott Henderson, Site Civil Engineer. Mr. Henderson said that the request is for a special permit/finding to reconstruct an existing nonconforming structure. He said that there is a single family home, a detached garage, landscaping and a retaining wall on the property. He said that there is an area at the rear of the site at the northeast corner and an area at the southeast corner that are part of the abutting parcel to the east. He said that this property benefits from the use of those easement areas, with exclusive rights to use but not construct on them. He said that the garage violates several setbacks with 4.5 feet off the rear of the garage and 7.2 feet on the east of the garage. He said that the garage was built in the 1970's. He said that the request is to rebuilt it in kind.

Mr. Henderson said that the proposed garage will have the same footprint but rotated to be parallel to the side wall of the home and the street line. He said that that rotation results in improvement of one of nonconformities from 4.5 feet to 5.5 feet. He said that the front corner will remain at 7.2 feet. He said that it will be a typical two car garage of the same height as the existing a standard pitched roof, as opposed to the existing gambrel roof.

Mr. Henderson said that the existing garage is deteriorating, particularly at the back. He said that all of the neighboring properties to the north are uphill of this site and water drains to the back of the garage. He said that there has been some rotting in the sill plate. He said that the homeowners decided to rebuild it completely.

Mr. Henderson said that there is a new carport proposed on the left side that will be open sided on three sides. He said that the intent is to cover the existing crushed stone area. He said that the carport will be no closer to the rear property line than the existing garage. He said that the driveway will be resurfaced in kind.

Mr. Henderson said a couple of abutters sent letters of support to the Board.

Mr. Levy asked if there was any consideration given to flipping it so that the open air part would be closest to the lot line and the closed portions would be inland. Mr. Henderson said that would involve relocating the driveway. He said that there is a large tree out front that the Petitioner wants to keep. He said that the abutters currently see the side of the garage and that is what they will see again but it will be a nicer one that is built with modern materials. He said that having the carport further away from the house defeats the purpose of it. He said that the plan is to tuck the carport in where cars are currently parked.

Mr. Levy confirmed that there will be no change in to the height. Mr. Henderson said it will remain at 21 feet.

Mr. Levy said that the bylaw gives special consideration to one and two family structures and the garage is neither. He questioned whether it would get the benefit of a special permit/finding under Section 6 or under the bylaw since it is not a dwelling. Mr. Henderson said that it does count toward TLAG, so there is an impact on what is considered to part of the single family use. He said that if it was attached it would be considered to be part of the dwelling.

Mr. Becker read the Planning Board recommendation.

Mr. Levy asked when the original garage was constructed. Mr. Henderson said that he believed it was built in 1978. Mr. Levy asked if it conformed to Zoning in 1978. Mr. Henderson said that there is a building permit on file for it. He said that historical research of the property did not show any relief granted for the property. Mr. Levy said that being so close to the setbacks, it is unlikely that the garage conformed.

Mr. Becker said that the underlying issue is whether Chapter 40A, Section 6 and Section 17 of the bylaw extend the protections to it because it is not a single or two family home. Mr. Levy the Board's authority under Chapter 40A, Section 6 with respect to pre-existing nonconforming structures. He questioned whether the garage was new in 1978 or if it replaced an existing structure.

Mr. Henderson asked about requesting relief under a variance. Mr. Becker said that the conditions for a variance are limited to shape of lot, topography or soil condition. He said that the Board currently does not have any information that address that issue.

Mr. Levy said that the proposed garage is an improvement. He questioned whether Board can get to a finding that the proposed garage will not be substantially more detrimental to the neighborhood. He said that predicate to that, the Board has to find that it is a pre-existing nonconforming structure.

Mr. Becker discussed Section 17 of the Zoning Bylaw.

Mr. Levy said that the Building Department may have some more historical information about the garage. He said that the Petitioner needs to show evidence that the garage is a pre-existing nonconforming structure and that the Board has the authority to grant the requested relief under Chapter 40A, Section of the Massachusetts General Laws and Section 17 of the Zoning Bylaw.

Mr. Henderson requested that the Board allow the hearing to be continued.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to continue the petition to June 3, 2021.

Mr. Levy voted aye.

Mr. Sheffield voted aye.

Mr. Becker voted aye.

#### ZBA 2021-25, GLOBAL COMPANIES LLC, 453 WASHINGTON STREET

Present at the public hearing was Al Whiting, representing Mobil Oil and Global Partners, the owner of the Mobil Gas Station at 453 Washington Street. He said that Mobil is requiring that the location be upgraded to their new image. He said that they went before the Design Review Board and they approved installation of blue and white fascia on the canopy, which is currently all white with one set of Mobil letters. He said that the Town only allows a letter height of 14 inches, which would be lost in a 36 inch fascia field. He said that the existing letters are 22 inches and the request is to reinstall the same size. He said that there must have relief granted for the existing letters on the canopy. He said that the Petitioner would also like to install a new set of Mobil letters on the right side of the canopy that faces traffic.

Mr. Levy said that there is an existing free standing sign that identifies the brand and that it is a service station. He questioned the need for an additional sign. Mr. Whiting said that the additional set of letter is on the same side of the canopy as the free standing sign. He said that he spoke with Mobil and the owners and they agreed that it can be eliminated.

Mr. Levy said that there have been a lot of issues in town regarding service stations replete with window signs and various other signs for items for sale in their convenience stores. Mr. Becker said that sometimes temporary signs are placed in the grassed area that parallels Washington Street on the northeasterly portion of the property. He said that it was not clear what the total signage will be with the proposed changes and how it relates to the Zoning Bylaw. He said that the bylaw prohibits internal lighted signs. He said that the two signs on the fascia and the Mobil sign at Washington Street are internally lit. Mr. Whiting said that the existing signage is internally illuminated, so there must have been relief granted in the past to allow for that. He asked if the signs are grandfathered. He said that the request is to replace the signs in kind. Mr. Becker

said that it is possible that the signs were installed before the bylaw was changed and there is a special permit process to address that. He said that the Board needs to understand the totality of the signage and compliance of the signs with the bylaw.

Mr. Becker read the Planning Board recommendation.

Mr. Levy said that the car wash on site also has signage. Mr. Becker said that the plans that were submitted do not show all of the window and temporary signs on the site. Mr. Whiting said that gas stations are the worst offenders with respect to temporary signs. He said that they are always placing signs in the windows of the store for soft drinks, etc. He said that it is an ongoing problem that all towns have with gas stations. He said that Mobil and the owners of the property are very agreeable and cooperative with removing signs.

Mr. Becker asked if the internal lighting of the signs controllable. Mr. Whiting said that it is dimmable. He said that the existing Mobil letters are neon and the proposed letters will be energy efficient LED that adjust automatically to ambient light but can also be dimmed. He said that they are up 17 feet in the air.

Mr. Sheffield asked if the individual letters and the white panel are illuminated. Mr. Whiting said that only the letters are illuminated. Mr. Sheffield confirmed that only the letters will show up at night.

Mr. Levy asked if this a 24 hour station. Mr. Whiting said that he did not believe so.

Mr. Sheffield said that for recent approvals for gas stations, the Board has put conditions in for temporary signs outside the building and on the windows.

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

Mr. Levy questioned whether the Board had enough information about the total sign package. He said that there was a comment from the Design Review Board about reducing the LED price sign to 14 inches on the standing sign. Mr. Whiting said that was done. Mr. Becker discussed inserting a condition about getting rid of window signs unless they comply by right, plus the dimmable nature of the lighting. Mr. Levy said that there are no residences in close proximity. He questioned how the Board can regulate it if the lighting needs to be dimmed. Mr. Becker said that would be regulated by the Building Inspector. Mr. Sheffield said that the blue and red letters will be illuminated against the white panel and it is unlikely that any of those colors will be too bright.

Mr. Sheffield discussed dimensions on the standing sign. He said that Mr. Whiting discussed 14 inch letters but the dimensions on the plans that were submitted show 1 foot 8 inches plus a fraction. Mr. Becker said that dimension is for the Mobil letters. He said that the letter size for the was reduced to 14 inches.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to allow a special permit, subject to conditions that the sign on the right side of canopy, the north side, be eliminated, illumination on a dimmable rheostat that will be dimmed if the Building Inspector determines that it is too bright, all nonconforming signs will be removed, and the signs will be illuminated only during hours of operation.

Mr. Sheffield voted aye.

Mr. Levy voted aye.

Mr. Becker voted aye.

ZBA 2021-26, KATHERNE BARRACK, 33 INGRAHAM ROAD

Present at the public hearing was Christopher Russ, Architect, representing Katherine Barrack, the Petitioner. He said that it is a pre-existing nonconforming property and the requested relief is for a special permit/finding and amendment to an existing variance that was granted in 1955.

Mr. Russ display plans. He said that the first project is the front mudroom entry that is currently just a door where you enter into the kitchen. He said that they would like to add a modest area for a mudroom and a closet and have a covered porch that sits just outside of it. He said that it will add 24 square feet to the overall footprint. He said that they will not build the finished space past the existing garage. He said that the face of it will be 25.5 feet and the stoop will be 20.5 feet from the property line. He said that it will be a one story addition.

Mr. Levy asked if the project was analyzed for compliance with the 500 Foot Rule. He said that it is coming closer to the street. Mr. Becker said that the mudroom is in the same plane as the wall of the house toward the west. He said that the exterior front stoop is less than 50 square feet and does not count for front yard setback.

Mr. Levy said that it is a uniquely shaped lot.

Mr. Sheffield said that the proposed mudroom with stoop and canopy seems to develop a new main entrance to the as opposed to the half circle entry. Mr. Russ said that the new porch area is more of a mudroom entry point rather than the main front entrance. Mr. Sheffield said that it will appear to be the main entrance. Mr. Russ said that visually it will add more of an entry to the home but the intent is not to make it the main entry.

Mr. Becker confirmed that the proposed air conditioning (ac) units facing Ingraham Road are outside of the setback area.

Mr. Sheffield said that the existing house looks like a piece is missing over the garage. Mr. Russ said that the roof was tilted to match the existing house and the back slope is at a different pitch so that when you turn toward Ingraham Road, it looks out of balance. He said that a traditional gable is proposed for the garage piece that will line up with the existing shed dormer make it all blend together. He said that the new ridge will be 5.1 feet taller than the existing garage ridge.

Mr. Levy discussed inserting a condition that no relief is granted by the Board for the 500 Foot Rule.

Mr. Becker read the Planning Board recommendation.

Mr. Levy said that the Board received a letter of objection from an abutter.

Mr. Levy discussed amendment of the variance. He said that the variance was granted under a prior statute and no findings were made that are required today under a variance. He said that the shape of the lot is unique. Mr. Becker said that this is a corner lot with nonconforming lot size, right side yard setback when viewed from Winthrop Road, front yard setback to Winthrop Road, and the left side yard setback when viewed from Ingraham Road. He said that it was not clear what the variance was for. Mr. Russ said that the 1955 variance involved an underneath garage and a grading issue. He said that the area was leveled to build a new garage. He said that an existing retaining wall was built at that time. He said that the hardship was

claimed to be topography. Mr. Becker said that the Board will review this as a special permit/finding, not a variance.

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

Paul Beaulieu said that the Board can check with the Building Inspector about the 500 Foot Rule. He said that where this involves second frontage, not the primary frontage, the 500 Foot Rule does not apply and the setback is held at 30 feet.

Mr. Levy moved, Mr. Sheffield 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. The Board made no finding with respect to compliance with the 500 Foot Rule.

Mr. Sheffield voted aye.

Mr. Levy voted aye.

Mr. Becker voted aye.

Mr. Sheffield commented on the materials over the roof canopy at the mudroom. He discussed having a metal canopy as well over the front door to identify it.

#### ZBA 2021-27, MATTHEW & VIRGINIA BOWDITCH, 4 DAMIEN ROAD

Present at the public hearing were Matt and Ginny Bowditch, the Petitioner. Mr. Bowditch said that the request is for a special permit for a nonconforming structure on a conforming lot. He said that the proposed construction will stay within the existing footprint. He said that one area of the construction will be nonconforming at the back right quadrant of the house where the existing setback is 17.3 feet. He said that construction involves an addition under a small portion of the existing porch, extension to the office on the second floor over the existing garage, and construction of a second floor addition over the existing kitchen.

Ms. Bowditch said that the property is located in a Water Supply Protection District. She said that no new impervious surfaces will be added. She said that new gutters will address drainage more effectively. She said that they reached out to the neighbors. She said that the Board received emailed letters from neighbors at 5 Damien, 6 Damien and 183 Walnut Street, who are across the street and on either side of the house. She said that she subsequently heard from the people who live in the Firehouse Condominium that is behind them at 182 Walnut Street, as well as the people across the street at 192 Walnut Street and 8 Damien Road. She said that they also spoke with a neighbor on Hunting Road. She said that they did not encounter any issues.

Ms. Bowditch said that the design is in keeping with the original part of the home that was built in 1920. She said that the addition was built in 1984. She said that there was a prior decision from 1987 to extend the porch. She said that there was a variance 1950's that related to a nursing home use.

Ms. Bowditch said that the plan is modest in scope, will make the house look nicer and will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Mr. Becker said that it is a corner lot with two front and two side yard setbacks. He said that the front yard and right side yard from Damien Road are nonconforming, and the left side and the front yard from Walnut Street are compliant but the right side yard is not.

Mr. Sheffield said that the massing of the house will be improved on the Walnut Street corner with the modest extension of the second floor that tends to anchor the elevation. He said that it is a good solution.

Mr. Levy asked about drainage structures on the property. Ms. Bowditch said that one downspout at the patio seems to go to a drywell. She said that one of the downspouts flows onto the patio where there is sand and gravel, and the others go down the driveway or onto grass.

Mr. Becker read the Planning Board recommendation.

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

Mr. Levy moved, Mr. Sheffield 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. Sheffield voted aye.

Mr. Levy voted aye.

Mr. Mr. Becker voted aye.

ZBA 2021-28, 22 WILSON STREET LLC, 22 WILSON STREET

Present at the public hearing were Marc Charney, 22 Wilson Street LLC, Paul Worthington, Architect, and Lisl Charney.

Mr. Worthington said that the request is to add a modest 419 square foot addition to the house for Mr. Charney's mother. He said that by expanding out the upstairs over the footprint, they will create enough space for bedrooms to accommodate grandkids, etc. without much impact to the site. He said that they will only place one post beyond the footprint, a few bays and a bedroom where the existing garage is for Mr. Charney's mother. He said that they will rebuild the roof to reorient it better for solar panels to face south.

Ms. Charney said that she has four children. She said that she is 83 years old and has increasing mobility issues. She said that Mr. Charney bought the house so that she could have a first floor bedroom in a home that is closer to Mr. Charney's family. She said that the upstairs bedrooms will be for her other children and grandchildren to use when they visit. She said that the bedroom in the basement will accommodate live in help, if needed. She said that the Senior Center and shopping are close by and she will be able to have a garden. She said that there is talk that the townhouse where she currently lives in Brookline may be torn down to make way for a new high rise building.

Mr. Sheffield said that he could not think of another five bedroom house in the neighborhood on a 5,000 square foot lot. He said that the plans show the driveway being unchanged. Mr. Charney said that some of the driveway will probably come up. Mr. Worthington said that the area in front of the garage can come out. He said that there will be two parking spaces off of the road. He said that they would take the paving out where the old garage door is.

Mr. Becker read the Planning Board recommendation.



Mr. Becker said that the proposed house looks very different from other houses in neighborhood. He said that it is located at a strategic intersection because the Fuller Brook Path is behind the house and you cannot come down Wilson or Twitchell Street without looking right at the house. He said that it does not look like it fits in the neighborhood. Mr. Charney said that 6 and 20 Wilson Street are being rebuilt and 9 Wilson Street is getting a full make over renovation. He said that currently there is a lot of activity on Wilson Street. Mr. Becker said that none of those houses are located on a 4,800 square foot lot.

Mr. Charney said that there is green on the south side and the Brook Path behind. He said that there is a lot of open space around the house that lends the house to not feel crowded. He said that the existing 1,100 square foot house has two bedrooms. He said that the challenge was to put the needs of his mother on one level by converting the garage into a bedroom on the first floor and adding another bedroom on the second floor to provide space for visiting family to stay.

Mr. Worthington said that because they reoriented the roof for solar, there will be a gable facing the street. He said that the appearance from the street will be a little greater but the overall mass will not be increased that much. He said that the south elevation will be increased because of the solar panels. Mr. Charney said that he does a lot of building in town and everyone, including the town, is asking for solar. He said that a huge tree on the green fell down a few months ago and that opened up the idea of having solar panels.

Mr. Levy said that it appears to be an orphan lot, stuck into Fuller Brook Path and the only house on that side of the street. He discussed Section 19C of the Zoning Bylaw regarding the setback from public land. He questioned whether the Board grant relief for that without a variance. Mr. Charney said that the previous owner came before the Board in the early 1990's to expand the garage by 10 feet under a special permit.

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

Mr. Becker discussed concerns about the south elevation and making a determination that it would not be detrimental to the neighborhood. He said that although the neighborhood is changing, it does not mean that it is a good thing. He said that there could be some changes made to the plans to make it workable but the currently proposed house does not fit right. He said that there is too much stuff on too small a lot. He said that looking out from the house, the area would appear open but it would not look that same way viewed from the Brook Path. Mr. Charney said that a huge stand of pine trees blocks the rear of the house from the Brook Path. He said that he spoke with all of the neighbors on Twitchell and Wilson Streets and showed them the plans. He said that everyone was supportive. He said that it is a small lot. He said that in 1901 a huge section of land behind the house was deeded to the town as part of the Brook Path. He said that it can be tricky trying to place renewable energy equipment where it is not intrusive.

Mr. Sheffield said that the Board received an email from Ann Jameson.

Ann Jameson, 9 Wilson Street, said that she will be living across the street in the house that she grew up in. She said that she did not see the plans. She said that she tried hard in making revisions to her house to stay true to original structure in terms of height and other things. She said that she agreed with some of the Board members' comments and concerns about the blockiness of the property. She said that she was sympathetic to Mr. Charney trying to create a place for his mother to age in place close by but it seems like a lot of house for an older woman and for that lot. She said that she hoped that they can design something appropriate that is not five bedrooms on 4,000 square foot lot.

Mr. Charney said that a challenge is adding a first floor bedroom. He said that they want to add a bedroom in the basement for a health care worker and add 400 square feet to the second floor for a third bedroom on that level. He said that it was difficult to get the plans to Ms. Jameson because she is not yet living in the house. He said that he did leave a message.

Mr. Becker said that his sense is that the Board does not have a unanimous vote for this. He discussed options for voting at tonight's hearing, continuing the hearing, or allowing the petition to be withdrawn without prejudice.

Mr. Charney asked if the Board had any suggestions about how they can achieve having renewable components. He said that he would like to continue hearing and come back with something that is more acceptable. Mr. Becker said that not every lot or house can be accommodated with a special permit. He said that the comments that he heard are that it does not fit in well with the neighborhood and it is too much house on too small a lot. He said that the lot cannot be changed, so they need to do something to change the house. He applauded Mr. Charney for trying to incorporate solar but he is balancing a number of variables in coming forth with a design. Mr. Charney said that the TLAG threshold in this district is 3,600 square feet and the proposal for this is 1,800 square feet.

The Board said that the earliest that it could continue the petition to would be September.

Mr. Charney asked to withdraw the petition without prejudice.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to allow the petition to be withdrawn without prejudice.

Mr. Sheffield voted aye.

Mr. Levy voted aye.

Mr. Becker voted aye.

#### ZBA 2021-29, JOHN & LORAIN O'HANLON, 38 & 44 CYPRESS ROAD

Present at the public hearing was David Himmelberger, Esq., representing John and Loraine O'Hanlon, the Petitioner. He said that the request is for special permit for reconfiguration of an existing property line between the two properties. He said that there is ample frontage for both lots but there is some interpretation that when existing lots are reconfigured and do not comply with Table 3 provisions, it requires a special permit. He said that 44 Cypress Road, as reconfigured, will have a build factor of 24.69, where a maximum of 20 is allowed for lots recorded after January of 1985. He said that 44 Cypress Road currently has a pre-existing nonconforming build factor of 20.80. He said that they are seeking to reconfigure the lots and nonconformity will go from a build factor of 20.80 to a build factor of 24.69. He said that the lots will comply in all other ways lots and will be permissible to be re-divided under the ANR process. He said that an additional benefit of the ANR is that the driveway that currently belongs to 38 Cypress Road but services 44 and appears to be part of 44, will move over to 44, as the rear of 44 would move back to 38. He said that this was a single property up until 1954 when it was originally divided in this fashion and 44 was the carriage house for the original home at 38.

Mr. Himmelberger said that reconfiguration of the lots shall not be substantially more detrimental to the neighborhood than the pre-existing nonconforming build factor and request favorable approval.

Mr. Levy confirmed that both lots are owned by the same owner. He said that the lots are merged for Zoning purposes. Mr. Himmelberger said that there are homes on each property and the lots cannot be merged to have two dwellings on one lot.

Mr. Levy said that this is not a Section 6 finding. Mr. Himmelberger said that it is a pre-existing nonconforming lot because it has a build factor in excess of 20. Mr. Levy questioned the Board's authority to grant relief for the request. Mr. Becker said that Chapter 40A, Section 6 and Section 17 of the Zoning Bylaw deal with changes to pre-existing nonconforming structures, not lots. Mr. Himmelberger said that 44 is a nonconforming structure because it is on a nonconforming lot with a build factor in excess of 20. He said that the request is to change the lot. He said that the Board frequently deals with conforming houses on nonconforming lots. Mr. Levy said that Section 17 is titled, "Changes to One and Two Family Dwellings." He said that the Board has to make a determination about the ways in which the existing structure does not conform and then determine if the proposed alterations will intensify the existing nonconformities. Mr. Becker said that in Section 6, the Legislature intended to provide protections to homeowners whose homes became nonconforming because the town took some action. He said that the land owner is the one who is making changes here. He questioned how it would be eligible under Section 17. Mr. Himmelberger said that the town imposed a new requirement of build factor for post 1985. Mr. Becker said that the existing nonconformity can continue to exist.

Mr. Levy said that this is beyond the Board's jurisdiction. Mr. Becker said that Section 17 does not apply. He said that the Board is not authorized to grant a special permit in this case.

Mr. Himmelberger requested that the petition be allowed to be withdrawn without prejudice. He said that they will apply to the Planning Board for an ANR.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to allow the petition to be withdrawn without prejudice.

Mr. Sheffield voted aye.

Mr. Levy voted aye.

Mr. Becker voted aye.

#### ZBA 2021-30, BUILDRITE, LLC, 9 WILDE ROAD

Present at the public hearing was Mr. Himmelberger, Esq., representing Buildrite, LLC, the Petitioner. He requested that the hearing be continued. Mr. Levy said that one of his law partners lives on the street. He said that he has not discussed the petition with him and can hear the matter impartially. Mr. Himmelberger said that there is no need for recusal.

Mr. Levy moved, Mr. Sheffield seconded the motion and the Board voted unanimously to continue the petition to June 3, 2021.

Mr. Sheffield voted aye.

Mr. Levy voted aye.

Mr. Mr. Becker voted aye.

#### ZBA 2021-31, KRASSEN DRAGANOV, 148 WALNUT STREET

Present at the public hearing was David Himmelberger, Esq., representing Krassen and Irina Draganov, the Petitioner. He said that the request is to raze the pre-existing nonconforming residence and build a new single family residence less than required side yard setbacks and greater than permitted building height. He said that the matter was before the Board on two prior occasions, each time given leave to withdraw without prejudice. He said that the first time was because they were seeking a new additional side yard nonconformity and the consensus was that the request should be for a variance. He said that the Petitioner refiled and requested a variance for the side yard setback but overlooked the need for relief on the height from average original grade. He said that the current request now includes the variance for height.

Mr. Himmelberger said that the existing home has a right side yard setback of 12.4 feet. He said that the request for a variance for the left side yard setback and the building height is predicated on the fact that the lot has a 41 foot drop in topography from front to back and is quite irregularly shaped. He said that the new home will increase the right side setback to 13.1 feet, the new left side yard setback will be 16.3 feet, and lot coverage of 1,329 square feet will increase to 2,284 square feet, which is below the permissible amount. He said that proposed TLAG is 5,173 square feet, due to 946 square feet in the basement. He said that the proposed height will be 34.47 feet from new grade. He said that the house sits in a depression and will be less than 25 feet high from Walnut Street. He said that the proposed work on retaining walls that are less than 4 feet will extend onto the abutter's property at 156 Walnut Street. He said that an agreement was reached with the abutter for an easement for the walls. He said that there will be some re-grading of the abutters property.

Mr. Himmelberger said that the property is located in a Water Supply Protection District. He said that the proposed infiltration system will have the capability to mitigate for a 1 inch rainstorm.

Mr. Himmelberger said that the property overlooks the Schofield fields. He said that all of the properties to the east, which formerly had significant drop offs, have been significantly raised up. He said that while this property will raise up a little bit on the right side, it will be beneficial to both 148 and 156 Walnut Street. He requested favorable action and a finding that this is not substantially more detrimental to the neighborhood than the pre-existing nonconforming structure. He said that it will be a significant improvement.

Mr. Sheffield said that this seems to be the only solution because of the topography. He said that the height is due to the slope and the exposed basement. He said that the expression of the front of the house on Walnut Street cannot be seen because the roofline does not come up to the street.

Mr. Becker read the Planning Board recommendation.

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

Laurence Shind, Esq., said that he was representing the Lyle's at 156 Walnut Street, the abutters. He said that they reached a memo of understanding along with an easement agreement that the retaining walls being built partly on their property can go there. He said that it has been a good process. He asked the Board to include a condition that there be an engineering report as to the structural integrity and safety of the walls and that they drain as intended to. He said that condition would satisfy his clients' understanding and they would be happy to support the project. Mr. Himmelberger said that was part of the agreement. Mr. Levy questioned whether that was subject to a private agreement between the parties. Mr. Becker said that the Board's involvement under the retaining wall bylaw is only for special permits that relate to walls in the setback or are greater than four feet in height.

Mr. Himmelberger asked if the Board would consider a provision that the Applicant shall obtain engineering review that is satisfactory to the abutter. Mr. Levy said that it is not appropriate and should be done by a private agreement. Mr. Shind suggested that the condition be that it is satisfactory to the Building Inspector, which is a condition that the Board often imposes. Mr. Levy discussed inserting a condition that requires a report that makes finding that the wall is structurally sound. He said that the plans should be stamped by a Professional Civil Engineer and then certified that the walls have been built in accordance with the plans.

Mr. Shind said that the neighbors have not seen the plans.

Mr. Himmelberger said that they will not get the easement that they need to construct the walls unless they have satisfied the abutter with the appropriately certified plan as to structural integrity and drainage.

Mr. Sheffield said that the Board often requests certified plans for drainage. He questioned whether the retaining walls be included in that.

Mr. Himmelberger asked if the Board can note in its decision that the Applicant has advised that as part of an agreement with the abutter to receive an easement, the Applicant will provide a certified, stamped engineering plan attesting to the structural integrity and drainage capability of the retaining walls to the abutter.

The Board discussed prior ZBA cases involving retaining walls.

Mr. Becker said that the Board's decision can be predicated on an engineer's report. Mr. Levy said that the Board could insert a condition that the retaining wall be designed by a Civil Engineer and that the Civil Engineer certifying the as-built being in compliance with the plan. He said that the abutters at 156 Walnut can see the plan before it is submitted and a Certificate of Occupancy will not issue until somebody has signed off that it has been built in accordance with the plan.

Mr. Levy moved, Mr. Sheffield 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 the Applicant submit a plan by a civil engineer pertaining to the retaining wall and its drainage capabilities to the Building Inspector, in contemporaneously filing for a building permit and a condition of Certificate of Occupancy upon a certification by a civil engineer that the wall has been built in accordance with the plan.

Mr. Sheffield voted aye.

Mr. Levy voted aye.

Mr. Becker voted aye.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to grant a variance, 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 the topography 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.

Mr. Sheffield voted aye.

Mr. Levy voted aye.

Mr. Becker voted aye.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to approve a special permit in a Water Supply Protection District.

Mr. Sheffield voted aye.

Mr. Levy voted aye.

Mr. Becker voted aye.

ZBA 2021-32, SCOTT & ELIZABETH LASHWAY, 38 LOWELL ROAD

Present at the public hearing were Keri Murray, Architect, Scott and Elizabeth Lashway, the Petitioner. Ms. Murray said that the request is for approval of a conforming addition on a pre-existing nonconforming lot with less than required side yard setback of 19.3 feet where 20 feet is required. She said that the proposed addition is at the rear of the property and will meet all Zoning requirements and TLAG for the district.

Mr. Becker asked about the garage work. Ms. Murray said that the garage is part of the project and will meet Zoning requirements. She said that currently there is nothing in that location. She said that pre-existing curb cuts will accommodate the new garage.

Mr. Becker said the existing nonconformity is the left side yard. He said that the challenge with the garage is the 500 Foot Rule, that talks about buildings that would include the garage. Ms. Murray said that the house and garage sit more than 30 feet from the road. Mr. Becker discussed the requirements of the 500 Foot Rule. Mr. Levy said that the requirements are listed in Section 19 of the Zoning Bylaw. He said that a surveyor will have to determine the front setback for properties within 500 feet. He said that the intent of the bylaw may have been for infill vacant lots.

Mr. Lashway said that the front setback at 42 Lowell Road appears to be 36.1 feet. He said that the proposed garage does not require a special permit. He asked if the Board could move forward with the review for a special permit for the main portion of the house and exclude the garage. He said that they can come back before the Board with a plan for re-siting the garage and information relating to compliance with the 500 Foot Rule.

Mr. Becker said that the proposed additions to the house do not increase the existing nonconformities. He said that under the bylaw, if the Board makes that finding, the Petitioner is entitled to a special permit.

Mr. Levy said that the house at the corner of Edmunds Street appears to be closer to the street. Mr. Lashway said that they just did a full renovation there with an attached garage within the last two years. He said that he believes that the plan showed a front yard setback of 36.1 feet.

Mr. Becker read the Planning Board recommendation. Ms. Lashway said that they will be going before the Historic Commission next week. Mr. Levy said that if the Board approves plans at this hearing, the Petitioner may have to come back if the Historic Commission asks for changes.

Ms. Lashway asked that the Board proceed with the petition without the garage.

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

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to approve a special permit and make a finding that the proposed dwelling structure shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, subject to conditions that the garage is eliminated from the plan and that a new plan will be submitted that excludes the garage.

Mr. Sheffield voted aye.

Mr. Levy voted aye.

Mr. Becker voted aye.

The public hearing was adjourned at 10:35 pm.

### PUBLIC MEETING

#### ZBA 20200-77, CRAIG BYRNES, 133 ABBOTT ROAD

Present at the public meeting was David Himmelberger, Esq. said that the request is for a determination that the proposed changes are minor modifications that do not require reopening a public hearing. He said that the cupola above the garage was eliminated. He said that there had been a fair amount of conversation about the lighting at the hearing and the homeowner decided to remove it. He said that other changes involve adding stone veneer to the base of the portico in the front, changing the portico columns from square to round, simplifying that balusters atop the portico to be better in keeping with the historical look, altering the door panel at the top of the portico overhang to a non-operable French door, and modification of the garage doors to a more traditional look. He requested approval of those minor modifications.

Mr. Levy said that the proposed changes are minor. Mr. Himmelberger thought that the Building Inspector might say that the cupola was shown in the original plan and is not shown now. He said that it was not clear if the other changes to the portico area would rise to the level past minor modifications.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to find that the proposed changes are minor modifications that do not require a public hearing and approve the changes.

Mr. Sheffield voted aye.

Mr. Levy voted aye.

Mr. Becker voted aye.

The Board discussed nonconforming structures under Chapter 40A, Section 6 and the Zoning Bylaw with Mr. Himmelberger.

#### ZBA 2021-33, DAVID COLETTA, 39 ATWOOD STREET

Mr. Becker read the legal ad for the petition.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to continue the petition to May 6, 2021.

Mr. Sheffield voted aye.

Mr. Levy voted aye.

Mr. Becker voted aye.

ZBA 2021-34, SUN LIFE ASSURANCE CO. OF CANADA, 96 WORCESTER STREET

Mr. Becker read the legal ad for the petition.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to continue the petition to May 6, 2021.

Mr. Sheffield voted aye.

Mr. Levy voted aye.

Mr. Mr. Becker voted aye.

ZBA 2021-35, SUN LIFE ASSURANCE CO. OF CANADA, 110 WORCESTER STREET

Mr. Becker read the legal ad for the petition.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to continue the petition to May 6, 2021.

Mr. Sheffield voted aye.

Mr. Levy voted aye.

Mr. Becker voted aye.

ZBA 2021-36, PARAGON INVESTMENTS, 6 HASTINGS STREET

Mr. Becker read the legal ad for the petition.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to continue the petition to May 6, 2021.

Mr. Sheffield voted aye.

Mr. Levy voted aye.

Mr. Becker voted aye.

ZBA 2021-37, FR LINDEN SQUARE, INC. 161-200 LINDEN STREET

Mr. Becker read the legal ad for the petition.

Mr. Levy discussed a conflict due to a partner in his law firm representing the Petitioner in other matters. Mr. Sheffield said that he will be available to sit in place of Mr. Levy.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to continue the petition to May 6, 2021.

Mr. Sheffield voted aye.

Mr. Levy voted aye.



Mr. Becker voted aye.

ZBA 2021-38, FR LINDEN SQUARE, INC. 161-200 LINDEN STREET

Mr. Becker read the legal ad for the petition.

Mr. Levy discussed a conflict due to a partner in his law firm representing the Petitioner in other matters. Mr. Sheffield said that he will be available to sit in place of Mr. Levy.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to continue the petition to May 6, 2021.

Mr. Sheffield voted aye.

Mr. Levy voted aye.

Mr. Becker voted aye.

As there was no further business to come before the Board, the meeting was adjourned at 10:53 pm.

Respectfully submitted,

Lenore R. Mahoney  
Executive Secretary

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