

**ZONING BOARD OF APPEALS**

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WALTER B. ADAMS  
DEREK B. REDGATE  
RICHARD L. SEEDEL

May 6, 2021

7:30 pm

Remote Public Hearing

Zoning Board of Appeals Members Present:

Robert W. Levy  
Richard L. Seegel  
Derek B. Redgate  
J. Randolph Becker  
Walter B. Adams

ZBA 2021-19, FRANKLIN NINE WELLESLEY LLC, 9 FRANKLIN ROAD – CONTINUED FROM  
MARCH 4, 2021

Present on behalf of the petition were John Farrington, Esq. and Victor Corda.

Mr. Farrington said that the Board reviewed a project in March for replacement of a single family home at the corner of Arlington and Franklin Roads. He said that the initial site plan changed the driveway from Franklin Road to Arlington Road. He said that the primary reason for the driveway relocation was Mr. Corda's design preference that the garage entrance face the side of the house, not the front. He said that several issues raised by neighbors and the Board focused primarily on drainage, as this section of the lot is a low area on Arlington Road, and the addition of a new driveway on Arlington Road, which is a popular cut through street. He said that Mr. Corda and the engineers from Verne Porter spent considerable time addressing the issues raised. He said that redesigned plans were submitted for this hearing, titled Proposed Conditions Site Plan, by Verne Porter, dated April 7, 2021.

Mr. Farrington said that the driveway entrance has been relocated to be off of Franklin Road, as is the driveway for the existing house. He said that the existing curb cut will be closed and a new driveway entrance will be located approximately 20 feet to the northeast. He said that to the left of the driveway is a leeching or detention basin. He said that all runoff from the new driveway will flow to the detention basin. He said that all roof runoff will flow into drywells located at the drainage discharge point and then into the detention basin. He said that they are estimating controlling runoff from 4,000 square feet of impervious surface, which is the roof and the driveway. He said that currently there are no drainage mitigations in place.

Mr. Farrington said that grading on the Arlington Road side of the house will be changed to prevent ponding in that area. He said that there are two proposed retaining walls, one off of the left corner of the front of the house and the other towards the rear of the house. He said that neither wall will exceed three feet. He said that the walls will control water flow and make the yard areas more level.

Mr. Farrington said that the proposed house will be in approximately the same location as the existing house. He said that the new residence plans that were submitted show the garage doors at the other side of the house, eliminating the doors for a two car garage dominating the front of the house. He said that new plans and a cover letter were hand delivered to the abutters who earlier made comments or raised objections at the previous hearing.

Mr. Corda said that he listened to what the neighbors said and took all of their requests into consideration. He said that he reversed the house, moved the driveway, clearly identified the retaining walls and their height, and created a detention area for runoff from the property. He said that there are two catch basins on the street. He said that he supplied his email and phone number to the neighbors and did not receive any response to discuss the revised plans. He said that the question about the 500 Foot Rule on Arlington Road is moot because the house was moved.

Mr. Adams asked about a window that is shown on Plan A2.1. He said that the window appears to be above grade and continues below grade. He asked if there is an area way there. He said that the basement plan shows a bedroom, a bathroom and a playroom in the finished basement. He said that with a bedroom, there needs to be an escape window. Mr. Corda said that it is an egress window that will meet code and have proper well on it.

Mr. Adams confirmed that the retaining wall intersects with the foundation at the corner of the playroom.

Mr. Adams said that there is no attic plan. Mr. Corda said that there will be no living space in the attic. He said that it will be accessed by a pull down.

Mr. Seegel asked about the size of the four trees to be taken down. Mr. Corda said that the trees are somewhat small and the plan is to replant them.

Mr. Becker said that on Plan A2.1, there is a window in between the two peaks. Mr. Corda said that it is there to soften a piece of roofline. Mr. Becker said that the underlying concern is that there is no TLAG information about the basement or the attic and the proposed structure is close to the trigger for Large House Review for a 20,000 square foot lot, where this lot is 15,000 square feet. He said that there will be a lot of house there and there is nothing to confirm that there will be no additional space in the basement or the attic. He said that there will be mounding of the site and sloping at the back down to the retaining wall. He said that on the westerly side it does down a couple of feet to Arlington Road. He said that on the front side of Franklin Road, it goes down a couple of feet. He said that the mound reduces the basement height for so that there is less TLAG but the Board cannot see that because a TLAG Affidavit was not submitted. He said that this will be a lot of house on a small lot. He said that Mr. Corda responded to the things that the Board focused on at the previous hearing.

Mr. Becker asked about the average height above grade. Mr. Corda said that, in accordance with the bylaw, the height from average grade cannot exceed 36 feet and the attic space cannot exceed 5 feet without becoming part of the TLAG calculation. He said that there the sides dropped down at the nine foot foundation allow for windows for more natural light. He said that unless it is more than 75 percent exposed, the basement does not count in the TLAG calculation. He said that 5,500 square feet on the first and second floor is below the threshold for a 20,000 square foot district but above the threshold for a 15,000 square foot district. He said that leveling the yard had to do with reversing the house. He said that when they turned the driveway to the other side of the property, they had to carry the grade throughout. He said that they left the

low side alone and worked off of the high side. He said that it is not a dramatic adjustment. He said that they wanted to be able to keep the water on the property.

Mr. Becker said that the Planning Board recommendation was not based on the new plans.

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

Mr. Seegel moved, Mr. Adams seconded the motion, and the Board voted unanimously to grant a special permit, subject to conditions that there be no habitable space in the attic, the retaining shall be less than 4 feet, and the leeching area is maintained by the Applicant for 30 months after the house is sold.

Mr. Corda said that there will be a clean out. He said that they have the ability to tie into the catch basin, as written into the deed, and can put in an overflow, as suggested by the town. Mr. Becker said that the intent of the condition is that the things shown on the drawings do what they are intended to do but if they get clogged up, they will not work. He said that condition says that Mr. Corda will keep it running for three years. Mr. Farrington said that those conditions are typically for one year to 18 months. Mr. Seegel said that he would accept 30 months.

Mr. Adams voted aye.

Mr. Seegel voted aye.

Mr. Becker voted aye.

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

Present on behalf of the petition was Raymond Yu, Pandamonium Design, who said that the request is to replace the sign at 96 Worcester Street. He said that the Design Review Board approved the plans, subject to a recommendation that the letter height be reduced to 26.5 inches. He said that the plans submitted to the Zoning Board reflect that change.

Mr. Yu said that Sun Life updated their corporate logo. He displayed plans of the existing and proposed signs. He said that the existing logo is mounted directly on the building surface. He said that they would like to have a cleaner representation of the logo.

Mr. Seegel asked if there is a difference in the letter height. Mr. Yu said that the proposed letters are a little bit shorter but because they will no longer be using a pan fabrication, it may look bigger. He said that overall it will be the same size. He said that the sign will be halo lit, with the logo illuminated with light bouncing off the wall surface.

Mr. Seegel asked how much space Sun Life occupies in the building. Mr. Yu said that Sun Life is the sole tenant.

Mr. Becker said that the letter submitted says that the cap height will be 16.5 inches and Sheet 2 of 5 says that it will be 26.5 inches. He said that Sheet 3 of 5 says that it will be 16.5 inches. Mr. Yu said that the letter height will be 26.5 inches and the height of the logo will be 46.5 inches.

Mr. Levy asked about hours of illumination. He said that previous approvals prohibited illumination on weekends as well as after certain hours. He said that the Board typically requires that any illumination be shut off after the business closes for the day. He said that the purpose of the sign is for patrons to find the

business. Mr. Yu said that they have been adhering to the conditions for the existing sign that was approved in 2014. He said that the sign is on a timer that turns on and off automatically and the sign is not illuminated on weekends. Mr. Levy discussed conditions in the 2009 and the 2014 decisions.

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

Mr. Levy read the Planning Board recommendation.

Mr. Seegel moved, Mr. Becker seconded the motion, and the Board voted unanimously to make findings that the proposed sign will be in harmony with the general purpose and intent of Section 22A of the Zoning Bylaw, as the sign scale will be will in reasonable relation to development scale, viewer distance and travel speed, and sign sizes on nearby structures; sign size, shape, and placement will serve to define or enhance architectural elements of the building and will not unreasonably interrupt, obscure or hide them; sign design will be in reasonable continuity with the mounting location, height, proportions and materials of other signage on the same or adjacent structures; sign materials, colors, lettering style, illumination and form are reasonably compatible with building design, neighborhood context and use; and sign size, location design and illumination are not judged to present a safety hazard to vehicular or pedestrian traffic, and grant a special permit, and approve a special permit subject to conditions that illumination shall be shut off at the close of business and is not allowed on weekends.

Mr. Seegel voted aye.

Mr. Becker voted aye.

Mr. Levy voted aye.

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

Present on behalf of the petition was Raymond Yu, Pandamonium Design, who said that the request is to install a new sign at 110 Worcester Street, which is the main entrance to the Sun Life business. He said that the sign will only be visible to visitors and employees and not visible to passing traffic because it is blocked by other buildings.

Mr. Becker confirmed that the sign will have the same dimensions as the sign at 96 Worcester Street. Mr. Yu said that the signs are identical.

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

Mr. Levy read the Planning Board recommendation.

Mr. Seegel moved, Mr. Becker seconded the motion, and the Board voted unanimously to find that the proposed sign will be in harmony with the general purpose and intent of Section 22A of the Zoning Bylaw, as the sign scale will be will in reasonable relation to development scale, viewer distance and travel speed, and sign sizes on nearby structures; sign size, shape, and placement will serve to define or enhance architectural elements of the building and will not unreasonably interrupt, obscure or hide them; sign design will be in reasonable continuity with the mounting location, height, proportions and materials of other signage on the same or adjacent structures; sign materials, colors, lettering style, illumination and form are reasonably compatible with building design, neighborhood context and use; and sign size, location design and illumination are not judged to present a safety hazard to vehicular or pedestrian traffic, and grant a

special permit, subject to conditions that illumination shall be shut off at the close of business and is not allowed on weekends.

Mr. Seegel voted aye.  
Mr. Becker voted aye.  
Mr. Levy voted aye.

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

Present on behalf of the petition was David Coletta, who said that the request is to put an HVAC condenser on the side of the house. He said that the property is 50 feet wide and the house is 22 feet wide, which leaves them with an 11 foot side yard setback. He said that the request is to put the condenser under the deck on the left side.

Mr. Levy discussed the variance request. He said that the bylaw that prohibits ac condensers in the setback was essentially a noise control bylaw. He said that the area to the left of the house is narrow and it is a narrow lot. He discussed the criteria for granting a variance. He said that he could reach a conclusion based on the shape of lot.

Mr. Levy asked if any sound proofing or landscaping to mitigate noise from the equipment was proposed. Mr. Coletta said that he could put something there.

Mr. Levy confirmed that Mr. Coletta discussed the plans with neighbors. Mr. Coletta said that the neighbors had no objections. He said that the neighbor next door has a unit on their side of the property line that is probably closer than the one that is proposed here.

Mr. Levy said that equipment is getting better and is less noisy.

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

Mr. Levy read the Planning Board recommendation.

Mr. Seegel moved, Mr. Redgate seconded the motion, and the Board voted unanimously to find 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, and grant a variance subject to a condition that lattice fencing between the two columns under the deck be installed.

Mr. Seegel voted aye.  
Mr. Redgate voted aye.  
Mr. Levy voted aye.

#### ZBA 2021-36 PARAGON INVESTMENTS, 6 HASTINGS STREET

Present on behalf of the petition were David Himmelberger, Esq. and Ryan Lenhart, Manager, Paragon Investments, LLC.

Mr. Himmelberger said that the request is for a variance a rear setback of 15 feet as previously approved by the Zoning Board in a special permit application that was submitted this past winter. He said that a special permit was granted to raze and reconstruct a new home with insufficient lot area of 7,000 square feet in a 15,000 SRD. He said that the existing home, that has come down, had a nonconforming front setback of 18 feet, a nonconforming right side yard setback of 17.5 feet, and a nonconforming detached garage.

Mr. Himmelberger said that the immediate stretch of five homes on the west side of Hastings Street all have front setbacks that are less than 20 feet. He said that the Applicant set the front setback at 23.3 to the new house and 18.3 feet to the porch. He said that the existing right side yard nonconformity and the nonconforming garage were eliminated. He said that the Applicant sought a special permit for a home with conforming side and rear yard setbacks, consistent with homes in the 15,000 SRD.

Mr. Himmelberger said that when the Applicant submitted a building permit application, it was rejected because the rear yard abuts the side yard of 7 Hunnewell Street, which is three lots deep in length. He said that the Zoning Bylaw was amended in 2000 for 10,000 and 15,000 square foot districts to require a minimum side yard setback for rear yards abutting side yards. He said that what was presented at town meeting and what was voted was an amendment to address corner lots. He said that no consideration was given to potential unintended consequences that as the bylaw is written could be construed to also impact homes not otherwise located on a corner lot. He said that he provided a copy of the Advisory Report that details that the amendment was trying to address corner lots.

Mr. Himmelberger said that, as the nonconforming rear setback on the detached garage could not be used for a special permit application, the only available Zoning relief is for a variance. He said that they are seeking relief for a total of 50 square feet within the impacted area of the additional five feet. He said that if the Applicant had not sought to remove the right side nonconformity, the nonconformity would have been much bigger. He said that they are now seeking a variance to allow the reduced setback of 15 feet, with the belief that the Board can find a hardship due to the topography, as the rear of the lot slopes up eight feet in a distance of 10 feet. He said that the abutting house at 7 Hunnewell Street sits 10 feet higher and forward of the proposed home.

Mr. Himmelberger said that the Application previously went through a lengthy review process with the Historical Commission for a waiver and the Zoning Board for a special permit, only to be stymied by application of the Zoning amendment that was created to address scenarios not present here, namely corner lots. He said that the desired relief can be granted without substantial detriment to the public good and without nullifying or substantially derogating the intent or purpose of the Zoning Bylaw. He requested favorable granting of a variance.

Mr. Seegel said that it is appropriate under the circumstances. He questioned why this was not caught when the Board granted the special permit. Mr. Levy said that the survey does not show the lots on abutting streets. He said that this is a unique nuance. He questioned how the topography relates to the relief and why the extra five feet is needed. Mr. Himmelberger asked that the Board exercise its discretion.

Mr. Levy read the Planning Board recommendation.

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

David Levine, 8 Hastings Street, said that he is in full agreement that a variance should be allowed. He said that the side yard that abuts 6 Hastings Street is well above what will be the roof line of the proposed home. He said that he has been watching an empty space next to his home for a number of months. He said that he worked closely with the Lenharts, who worked hard to create a home that is in keeping with the historical homes along the street. He asked that the Board allow this to move forward. He said that it is long overdue.

Zahira Ammarguellat, 7 Hunnewell Street, said that she had not been contacted about the special permit. Mr. Levy said that notices were sent to abutters and abutters to abutters within 300 feet, according to the Assessor's data base. He said that notice of the hearing for the petition is published at Town Hall and in the Wellesley Townsman.

Mr. Seegel moved, Mr. Redgate seconded the motion, and the Board voted unanimously to find 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, and to grant a variance.

Mr. Seegel voted aye.

Mr. Redgate voted aye.

Mr. Levy voted aye.

#### ZBA 2021-40, YVONNE & MARK PYTLIK, 192 WASHINGTON STREET

Present on behalf of the petition were Yvonne Pytlik and Peter Lewandowski. Mr. Lewandowski screen shared a site plan shows an existing addition to the house that was built in 1910 to 1920 for a doctor's office. He said that a small garage was added on the back side of the parcel after that. He said that the proposal is to remove the existing garage that is in disrepair and add a garage at the end of the house, increasing the distance to the property line from 3.3 feet to 6.8 feet. He said that the plan is to reconfigure the garage and add mudroom entryway to the main house. He said that they will put a dormer on the side on the second floor to change a bedroom to study and create two bedrooms and a bathroom. He said that the project received approval from the Wellesley Historical Commission. He discussed the proposed elevation drawings. He said that relief is requested for a pre-existing nonconforming setback. He said that the proposed lot coverage will be compliant.

Mr. Levy asked about TLAG calculations. Mr. Lewandowski said that he did them but the Building Inspector did not think they were required because of the area requirements. Mr. Levy said that although the project is exempt from Large House Review, the Board typically wants to see the TLAG calculations for their analysis of whether it is substantially more detrimental. Mr. Lewandowski said that the basement will be unfinished and the attic will be partially done.

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

Gina Birmingham Cohen, 190 Washington Street, said that she and her husband, Adam Cohen, abut on the east side of the Pytlik's property. Mr. Cohen said that the Pytlis had not approached them about this project. He said that his understanding is that the structure will be moved from away from the Cohen's property but will still be nonconforming. He said that it seems like there will be much more square footage they will be facing. Mr. Levy said that it will be larger structure than what currently exists. He said that for the Board to

grant a special permit, it has to make a finding that the proposed structure is not substantially more detrimental to the neighborhood than the current structure.

Ms. Cohen said that the second floor blocks not only sunlight for a good part of the day, but they also lose their sight line out of that side of the house. She said that a two story garage was just built on the other side of their property and they feel as if they are being sandwiched here.

Mr. Cohen said that they have had a cordial relationship with the Pytliks for many years. Mr. Levy said that the Board encourages applicants to speak with their neighbors prior to the public hearing to address some of the issues.

Ms. Cohen said that another concern is whether there will be any rentals or use of the property. Mr. Levy said that the property is located in a single family zone. Mr. Cohen said that there was a question of whether part of the house was currently being rented. He said that they thought that the addition could be used for additional rentals.

Mr. Seegel suggested that the petition be continue for one month to give the applicants and the neighbors time to review the plans and try to reach some sort of accommodation.

Mr. Levy said that the Board is willing to take a vote at this hearing but it has to make a finding unanimously that the proposed renovation will not be substantially more detrimental to the neighborhood than the existing structure. He said that the Board has heard some evidence from the abutter that could lead it to believe that it is detrimental to the neighborhood. Mr. Lewandowski requested that the petition be continued.

The Board discussed hearing the petition de novo at the continued hearing.

Mr. Becker moved, Mr. Seegel seconded the motion, and the Board voted unanimously to continue the hearing for this petition to June 3, 2021.

Mr. Seegel voted aye.

Mr. Becker voted aye.

Mr. Levy voted aye.

#### ZBA 20201-41, RAJEEV & MARCELL BHANGOO, 12 PRINCETON ROAD AND 32 UPSON ROAD

Present on behalf of the petition was David Himmelberger, Esq. and Rajeev Bhangoo, who is the record owner of 12 Princeton Road and 32 Upson Road.

Mr. Himmelberger said that the request is connection with reconfiguration of a common line through the ANR process. He said that 12 Princeton is a nonconforming lot due to insufficient side yard setback of 18.2 feet. He said that a special permit was approved in 2016 for a rear addition. He said that the Bhangos recently purchased 32 Upson Road, which shares a common lot line. He said that 32 Upson Road is a nonconforming lot, as it received a variance in 1973 to construct a left side addition with a 6 foot setback. He said that they would like to reconfigure the common line between the two properties through an ANR process. He said that through that reconfiguration, 32 Upson Road will become a conforming structure, as the nonconforming left side yard setback will be eliminated. He said that a special permit is required because both lots were created prior to 1985 and are subject to Table 1 and would now be Table 3 for which conforming frontage is 90 feet and rear setbacks are 18 feet, rather than the Table 1 dimensions of 65 feet of



frontage and 10 foot rear yard setbacks. He said that currently 12 Princeton Road does not have 90 feet of frontage.

Mr. Himmelberger said that the Board has previously granted on similar matters. He said that the bylaw amendment that gave rise to the Table 3 lots and the increase in dimensional requirements was designed to pertain to newly created lots upon which no prior development had occurred, as opposed to pre-existing lots upon which houses were already located and were compliant with Table 1 dimensions.

Mr. Himmelberger said that by allowing reconfiguration of the lot line, 2,245 square feet will be removed from 12 Princeton and added to 32 Upson, and the existing left side yard setback will be eliminated. He said that 12 Princeton Road remain a nonconforming lot, as it currently exists, with insufficient side yard setback and frontage of 65 feet.

Mr. Levy asked about the purpose of the subdivision. Mr. Himmelberger said that his client is exploring a range of options that include building on, renovating or building a new house at 32 Upson Road. Mr. Bhangoo said that all of those options are for himself. He said that he would move from 12 Princeton to 32 Upson. Mr. Levy can do that on a nonconforming lot with a Section 6 finding. He discussed the authority of the Board under Section 24 of the Zoning Bylaw. He asked Mr. Himmelberger to point out where in the bylaw the Board as the Special Permit Granting Authority (SPGA) is permitted to authorize a change in lot lines. Mr. Himmelberger said that they will be removing the nonconformity at the left side of 32 Upson Road and creating a new one. He said that there is a pre-existing nonconforming structure at 12 Princeton Road and at 32 Upson Road and by making the change, they will make one of them conforming. Mr. Levy asked if the request is for the Board to make a Section 6 finding. He said that lot line changes are authorized for approval by the Planning Board.

Mr. Seegel said that the applicant should get the lot line changed first and then come back before the Zoning Board. Mr. Himmelberger said that the Board has the authority to grant a special permit for allowing the reconfiguration even though it would not be conforming under Table 3. Mr. Levy said that there needs to be a place in the bylaw where authority is delegated to the Board to grant special permits for certain delineated circumstances.

Mr. Becker said that the Board reviewed a similar case and concluded that it was a Planning Board issue. Mr. Himmelberger said that in the case that Mr. Becker was referring to, both homes were fully conforming and would remain fully conforming and the lot line reconfiguration. He said that it was the build factor that they were seeking relief for. He said that in this case, both houses are pre-existing nonconforming due to setbacks and therefore, this is different as it eliminates a nonconformity and makes 32 Upson Road a fully conforming lot and structure.

Mr. Levy read an excerpt from Section 17 of the Zoning Bylaw regarding applications for changes to nonconforming one or two family dwellings. He said that the request before the Board is not to change the dwelling but to change the lot lines.

Mr. Himmelberger asked that the Board find that the change of the frontage impacts the dwelling. He said that it is a pre-existing nonconforming structure that they are seeking to eliminate on one ill at 32 Upson Road and allow 12 Princeton Road to remain unchanged. He said that its existing frontage or side yard setback will not change. Mr. Levy said that he did not think that the Board has the authority to grant the relief that was asked for.

Mr. Seegel asked about the area of each lot and how will it change. Mr. Himmelberger said that each existing lot is slightly 15,000 square feet, and as reconfigured, 2,245 square feet will be removed from 12 Princeton Road and added to 32 Upson Road. He said that 12 Princeton Road would go to 11,543 square feet and 32 Upson Road would go to 18,488 square feet. He said that the Zoning District is SRD 10.

Mr. Seegel discussed concerns about the Board's authority and tying the hands of future owners of 12 Princeton Road to do something with the back of the property that they can do today but will not be able to do tomorrow. Mr. Himmelberger said that the area from the rear of 12 Princeton Road coming down to the existing lot line at 32 Upson Road is a slope and not usable back yard space. Mr. Seegel said that there is a shed there now. Mr. Bhangoo said that a slope runs north of the shed and goes diagonally across the lot line.

Mr. Levy said that the property owner can come before the Board for a special permit to do a renovation at 32 Upson Road.

Mr. Levy read the Planning Board recommendation.

Mr. Levy said that Board only has the authority to grant special permit under the powers that are delegated to it. Mr. Himmelberger said that by removing the nonconformity at 32 Upson Road, it will make 12 Princeton Road a nonconforming Table 3 lot. Mr. Levy said that the Board is authorized to grant relief under four matters that are listed in Section 24 of the Zoning Bylaw. Mr. Himmelberger said that none of the Board's powers under Section 17 of the Zoning Bylaw fall within the powers listed in Section 24. B, 1 through 4. He said that the powers are additional. Mr. Levy said that the Section 17 deals with pre-existing structures. Mr. Becker said that Section does not discuss lots in the body of the text, nor does Chapter 40A, Section 6.

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

Mr. Himmelberger requested that the Board allow the petition to be withdrawn without prejudice.

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

Mr. Seegel voted aye.

Mr. Redgate voted aye.

Mr. Levy voted aye.

#### ZBA 2021-42, GERALDINE JARVIS, 26 HARRIS AVENUE

Present at the public hearing on behalf of the petition were David Himmelberger, Esq. and Geraldine Jarvis.

Mr. Himmelberger said that he is patron of Ms. Jarvis' doggy daycare. He said that Ms. Jarvis has been before the Board on nine separate occasions to renew a special permit for a home occupation. He said that the special permit was amended in 2017 to allow for up to 15 dogs during the day and 10 at night. He said that Ms. Jarvis has never heard anybody expressing concerns and was surprised when a letter was submitted by her neighbor across the street. He said that Ms. Jarvis submitted a reply to the Board that rebuts and refutes almost everything that Ms. Bae said. He said that since viewing the letter, she pulled together several residents in the neighborhood, all of whom wrote to the Board to express their opinion that their experience of Ms. Jarvis' home occupation does not square with the representations in the letter from Ms. Bae.

Mr. Himmelberger said that the request is for renewal of the special permit. He said that although she retired a month ago, Sue Webb, Animal Control Officer, made routine visits to the site, in compliance with the special permit, and never saw any issues. He said that he has never seen any issues at the times when he was there. He said that a number of neighbors have called or email to express their support. He said that one of the issues is with the smaller dogs in the front yard. He said that the neighbors at 19 and 21 Harris Avenue reported that they enjoy seeing the small dogs. He said that Ms. Jarvis is willing to no longer bring the small dogs to the front area and they will remain in the backyard.

Mr. Himmelberger said that Ms. Jarvis has had a good relationship with the neighbor across the street. He said that they have never raised any issues in the past. He discussed the drop off process. He said that they have made efforts to not block any driveways and remind people to drive slowly on the street. He said that they have offered to pick dogs up to further reduce traffic. He said that, as a practice, they do not shout at the dogs. He said that they would like the opportunity to continue. He said that they are not currently accepting any new dogs.

Mr. Seegel discussed concerns in Ms. Bae's letter about people letting their dogs run free before getting in the car and using the Bae's garden to relieve themselves. Mr. Himmelberger suggested that the Board issue a condition that any dogs being dropped off or picked up must be on leash at all times between the house and the vehicle and vice versa.

Mr. Levy said that the special permit seems to have morphed from the initial permit to the present situation. He said that overnight boarding is now allowed. He said that it seems that every time the special permit comes before the Board, it gets expanded and it is a lot different from when it started. He said that the bylaw provides that there shall be no activity as a result of the home occupation that disrupts or disturbs the customary nature of the residential neighborhood.

Mr. Levy asked about the number of dogs. Mr. Himmelberger said that the maximum allowed by the special permit was increased to 15 during the day and 10 at night. He said that they do not have 10 overnight but there could be 15 dogs during the day at various times. Mr. Levy said that it has expanded over the years. He said that it was originally only daycare.

Mr. Himmelberger said that pick up and drop off seems to be the issue for the Baes. Mr. Levy said that frequent barking, employees shouting at the dogs, and a loud metallic banging to get the dogs' attention that neighbors can hear is not acceptable in a residential neighborhood.

Mr. Levy said that a number of letters and emails came in late today that he has not had the opportunity to read.

Mr. Redgate asked if multiple dogs and vehicles show up at the same time. Mr. Himmelberger said that there is a higher level of activity of drop off in the morning and pick up at the end of the day. He said that he has never seen any queuing when he was at the site. He said that the wait time from arrival to when your dog is brought out is approximately five minutes. He said that every time his dog is brought out to him, she is on a leash.

Mr. Redgate asked if the past year with Covid has exacerbated the hand-off, masks and one at a time issues. Ms. Jarvis said that she had hardly any dogs during Covid. She said that none of the other neighbors complained about barking. She said that the cars have been removed from the street.

Mr. Seegel discussed conditions that the Board could issue to address the problems. He said that the Board could renew the special permit for one year, allow no dogs on the front lawn, and have Ms. Jarvis work with the staff to keep the noise level down as much as possible.

Mr. Levy said that this is not a typical home occupation but more of a business out of the home.

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

Julie Bae, said that her family lives diagonally across the street and has always had a cordial relationship with Ms. Jarvis. She said that they are cognizant that this is her business and livelihood and have tried to be supportive. She said that in recent years the business has become bigger. She said that there are three main issues, primarily the noise. She said that her parents can hear barking 24 hours a day, which is very disturbing. She said that she understands that workers may need to raise their voices to control the dogs but it does carry across the street. She said that traffic become an issue. She said that when she visits her parents' house at different times of the day. She said that cars queue in front of the house. She said that it would be helpful if the owners be required to keep their dogs on leash at all times. She said that currently the dog owners are letting their dogs run rampant and the dogs are coming onto her parents' property to relieve themselves on the grass. She said that the sound has become the primary issue and it has increased over the years.

Kelly Chow, 16 Harris Avenue, thanked the Board for their service and the opportunity tonight to be heard. She said that she lives a couple of houses away. She said that she was speaking on behalf of other neighbors as well. She said that she did not receive notification other than the notice of the hearing. She said that she has seen a lot of cars on the street many times a day. She said that the increase in traffic has magnified during the pandemic. She said that she frequently goes out for walks and cars are going by too fast. She said that there are a lot of kids and elderly in neighborhood that walk. She said that there is a concern about public safety. She said that she has observed kids getting off the bus and drivers passing by to drop off and pick up dogs. She said that they have not been following the speed limit and do not always stop for the school bus. She said that the Applicant stated that she was no longer taking new business. She said that someone rang her doorbell in April looking for the doggy daycare. She said that she told the woman that this was not the doggy daycare. She said that the woman's husband stepped into her garage with their dog. She said that the husband went through the mailbox and rummaged through her mail. She said that was disturbing. Mike Chow said that he was taken aback when someone rang his doorbell, asking for Jill and coming onto their property with a dog and rummaging through their mail. He said that the business changed from 7 am to 7pm to a 7pm to 7 am business. Mr. Levy said that while it was bad manner and inappropriate, it seems to be an aberration that happened once and that cannot not necessarily be blamed on the applicant but on the individuals who were disturbing the Chows. Ms. Chow said that she appreciates that it is a business but wanted to remind the Board that this is a residential neighborhood. She said that the business appears to be growing and is causing public safety and traffic concerns.

Christian Chow said that he hears the dogs barking and yelling. He said that he sees cars queue in the street and next door in the circle. He said that he has noticed an increase in traffic over the past few years, with cars coming as early as 5 am. He said that there is a disconnect between the business owner and the doggy daycare clients. He said that he knows that Ms. Jarvis has been reminding her clients to be cognizant of the neighborhood but some of them are not driving safely. said that the demographics of the neighborhood have changed a lot with elderly, children and disabled people.

Yu Yu Ong, 20 Harris Avenue, said that she had concerns about the traffic and having so many cars on the street.

Mr. Levy said that Ms. Jarvis only has right to do her business under a special permit that is approved by the Board.

Mr. Himmelberger described a typical day and night at the doggy daycare. He said that some of the dogs are there for a full day, with drop off in the morning and pick up at night. He said that the average number of dogs at night is five and those are typically for people who are travelling. He said that most of the dogs are there for the day.

Mr. Himmelberger said that Ms. Bae letter was submitted the day before the hearing. He said that neighbors on the street submitted letters of support. He said that the Applicant is willing to accept conditions.

Mr. Seegel asked about shortening the hours to 7:30 am to 6pm. Ms. Jarvis said that a lot of her clients are doctors and nurses who drop their dogs off at 6 am. Mr. Seegel said that the dogs are not allowed to be dropped off until 7 am. She discussed the neighbors' concerns. She said that she typically has 10 to 15 dogs a day. She said that some days they have dogs for half days in the morning and the afternoon. She said that she has not had dogs overnight during Covid. She said that she is happy to make changes to address neighbors' concerns.

Mr. Levy discussed continuing the petition to allow Ms. Jarvis time to meet with her neighbors to try to come up with acceptable protocols. Mr. Himmelberger said that would be acceptable.

Mr. Levy asked if the Animal Control Officer had been visiting the property, in accordance with the condition of the previously issued special permit. Mr. Himmelberger said that the recently retired Animal Control Office had visited the property but was not sure if the new Animal Control Officer had resumed the practice.

Mr. Levy suggested that Mr. Himmelberger and his client review the criteria in the bylaw for home occupations. He confirmed that the application before the Board was not intended to expand the business. Ms. Jarvis said that health care workers come to the property who are unrelated to the business.

Ms. Bae said that she and her parents did mention to Ms. Jarvis that there was a noise issue. She said that she had a list of dates. She said that Ms. Jarvis has a facebook ad that lists a 6 am drop off.

Mr. Seegel moved, Mr. Redgate seconded the motion, and the Board voted unanimously to continue the petition to July 1, 2021.

Mr. Seegel voted aye.

Mr. Redgate voted aye.

Mr. Levy voted aye.

ZBA 2021-43, JEFF GOLDMAN, 28 BANCROFT ROAD

Present at the public hearing on behalf of the petition was Jeff Goldman, who said that the request is to put a mini split compressor next to the house. He said that his house is located within the setback on two sides. He said that the proposal is to put the mini split unit within a recess of the house, further away from the

property line than the house. He said that the only abutter who would be close to where the unit will be placed submitted a letter of support. He said that there are trees and large shrubs on the property line between the two houses for a visual and noise buffer.

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

Mr. Levy read the Planning Board recommendation.

Mr. Levy discussed granting relief based on the shape of the lot.

Mr. Levy asked about screening or anything that can be done to mitigate noise. Mr. Goldman said that there is vegetation in place between the two properties. Mr. Levy confirmed that other plantings are going in. Mr. Goldman said that the new unit will replace five existing window units, so it will be a lot quieter than the units that are there now. Mr. Levy said that ac units are much more efficient than they were in the past.

Mr. Seegel moved, Mr. Redgate seconded the motion, and the Board voted unanimously to find 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, and to grant a variance.

Mr. Seegel voted aye.

Mr. Redgate voted aye.

Mr. Levy voted aye.

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

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

Mr. Seegel requested that the hearing be adjourned and the Linden Street property petitions be continued to a specific night other than a regular hearing, due to the fact that the petitions will take at least two hours to resolve all of the issues that have been raised.

Peter Tamm, Esq., said that their entire team was present at the hearing. He said that the filing was made in February and building permits have issued. He said that the matters before the Board are not difficult. He said that while the property is large and there are a number of items, they could spend 15 to 20 minutes on each petition. Mr. Seegel said that he would not be able to continue with the hearing tonight.

The Board discussed continuing the petitions to May 20, 2021. Mr. Tamm discussed addressing neighbors' concerns.

Mr. Seegel said that the Planning Board had some objections. Mr. Tamm said that no trees will be removed.

Mr. Becker acknowledged that the two petitions are about outdoor dining and signage.

Mr. Redgate moved, Mr. Becker seconded the motion, and the Board voted unanimously to continue the petition to May 20, 2021 at 7 pm.

Mr. Seegel 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 10:12 pm.

Respectfully submitted,

Lenore R. Mahoney  
Executive Secretary

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