

**ZONING BOARD OF APPEALS**

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RICHARD L. SEEGEL

August 5, 2021

7:30 pm

Public Hearing

Zoning Board of Appeals Members Present: J. Randolph Becker  
Robert W. Levy  
Richard L. Seegel

**BUSINESS MEETING****ZBA 2021-42, GERALDINE JARVIS, 26 HARRIS AVENUE**

Present at the business meeting on behalf of Geraldine Jarvis was David Himmelberger, Esq.

Mr. Becker said that the request is for a proposed change to the expiration date of a special permit that was granted to December 31, 2021, instead of one year from the date of the permit. He said that the doggy daycare will close sooner than what is currently allowed.

Mr. Levy and Mr. Seegel concurred that this is a minor modification. Mr. Levy said that, given the nature of the hearings, this did not seem to be a request that members of the public would oppose or object to and the Applicant is requesting the change.

Mr. Levy moved, Mr. Seegel seconded the motion, and the Board voted unanimously to find that the request to shorten the expiration date is a minor modification and further that the Board modify the permit so that it expires on December 31, 2021.

**PUBLIC HEARING****ZBA 2021-46, JOHN & LORAIN O'HANLON, 44 CYPRESS ROAD**

Present on behalf of the Petitioner was David Himmelberger, Esq., who said that this was the second of two efforts to realign a common lot line between 38 and 44 Cypress Road, both owned by John and Loraine O'Hanlon. He said that the Board was concerned that if it were to grant relief, the build factor would still be in excess of 20. He said that the Petitioner has exhaustively reviewed any other options and could not find any alternative that would result in a build factor of less than 20. He requested that the petition be allowed to be withdrawn without prejudice.

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 Levy seconded the motion, and the Board voted unanimously to allow the petition to be withdrawn without prejudice.

ZBA 2021-55 LORIANNE SAINSBURY- & WILKINS WONG, 4 MANSFIELD ROAD

Mr. Becker said that the hearing was continued from July 1, 2021 to be heard de novo.

Present on behalf of the petition were Lorianne Sainsbury-Wong, the Petitioner, and David Kinsella, Architect.

Ms. Sainsbury-Wong said that the request is for a special permit/finding for a pre-existing nonconforming one car detached garage that they are seeking to demolish to create a new garage with a smaller footprint. She said that it is a corner lot and the garage has a setback of 10.9 feet. She said that the proposal is to build the new garage within the setback and increase the nonconformity by four feet, closer to Earle Road. She said that they are also seeking to demolish the existing deck and build a new two story addition and attach a breezeway from the proposed home expansion to the proposed garage. (Sentence removed) She said that the property is located in a Water Supply Protection District. She said that the Chair of the Planning Board said that this property has one of the most difficult drain easement that she has seen on residential property in Wellesley. She said that the property is located at the corner of Mansfield Road and Worcester Street, which is a State highway. She said that her Civil Engineer appropriately identified the location of the easement between the house and the existing garage. She said that the existing garage is partially located on the easement. She said that they worked extensively with the Town Engineer at the Department of Public Works to get the garage off of the easement. She said that there is a State runoff pipe from the highway. She said that the intent is to get the garage off of the easement and build the new garage in the setback area where the existing garage is currently noncompliant. She said that it will increase the nonconformity but the nearest houses on Earle Road are 100 feet away. She said that there is a lot of screening in place.

Ms. Sainsbury-Wong said that she and Michael Grant, Building Inspector, examined all of the documentation for the property. She said that a Building Permit, issued on June 26, 1951, shows the location of the existing garage. She said that it is a pre-existing nonconforming structure.

Ms. Sainsbury-Wong said that the proposal is to attach a breezeway for protection from natural elements from the garage to the home.

Ms. Sainsbury-Wong said that they believe that the proposed plan is not substantially more detrimental than the existing structures. She said that they outreached extensively to their neighbors, some of whom told her that they would oppose alternative location of the garage at the intersection of Mansfield Road and Worcester Street because of safety issues. She requested that the Board grant the special permit/finding.

Mr. Becker said that he saw this as two distinct projects, one is the additions to the fully conforming house and the other is relocation the garage. He said that with the breezeway connection, the existing house and the proposed addition will become nonconforming.

Mr. Seegel said that the existing house with the proposed addition conforms with all of the Zoning Bylaws but because the plan is to connect the house to the garage, that will make the house nonconforming where before it was not. Mr. Becker said that the nonconformity would extend from the western side of the garage to the easternmost side of the house, instead of from the easternmost side of the house to the westernmost side of the house, both of which are conforming. Mr. Seegel said that without the breezeway, the Applicant can build the proposed addition and the Board only has to review the proposed garage. He said that his opinion is that moving the garage from the town's easement is an improvement that could warrant moving it closer to the side property line.

Mr. Kinsella asked about dividing the project to consider the garage and the breezeway as one project and the house as a different element. Mr. Becker said that once the house and the garage are connected, it is a single structure. Mr. Seegel said that the Board will not allow the house to be made nonconforming under a special permit. Ms. Sainsbury-Wong asked the Board to review the petition without the breezeway. Mr. Becker said that the reason to move the garage is to free the easement. He said that with the breezeway, it does not.

Mr. Levy asked what is under the easement. Mr. Kinsella said that it is a State drainage easement from Route 9. Ms. Sainsbury-Wong said that easement information that is contained in the records and their purchase has no barriers or restrictions. She said that she can lawfully build on the easement as her predecessors did with a building permit. She said that she would then bear any risk for removing the breezeway for access by the State or if the town needed to access the runoff pipe. She said that, based on the Board's assertion that the connection of the breezeway from the garage to the house would make the house nonconforming, she was willing to withdraw the proposal for the breezeway if that can move the petition forward.

Mr. Seegel confirmed that the Board would review the petition as removing the existing garage and building a new one in the setback area but off of the easement. He confirmed that DPW considers the easement to be active. Ms. Sainsbury-Wong said that the DPW concurs with the proposed work so long as there is no footing of the proposed garage on the easement.

Mr. Seegel asked about the distance between the garage and the proposed addition. (Sentence removed) Mr. Seegel said that they can build the new addition and leave the garage where it is because they have a right to have it where it is now. Mr. Kinsella said that the preference is to move it off of the easement. He said that Ms. Sainsbury-Wong would like to have a bigger garage but they decided to scale it back.

Mr. Becker said that the Board received a significant amount of comments, half of which support the project and the other half opposing the project.

Mr. Levy confirmed that review of the house project is not jurisdictional for the Board and the addition can be built by right. He said that the Board could not comment on massing or other attributes that could potentially be detrimental. Mr. Becker said that the house will have to go through Large House Review.

Ms. Sainsbury-Wong said that the garage is a necessary component to a single family dwelling. She said that other decisions look at the totality of the project and look at the house addition at the same time as review for the nonconforming structure. She said that a garage is included in the TLAG. Mr. Becker said that the Applicant does not need a remedy for the house expansion. Mr. Seegel said that there is currently a conforming house on a conforming lot.

The Board members said that the Building Inspector will make a determination regarding eligibility for Large House Review (LHR). The Board further discussed looking at the property as whole or as the house being exempt as by right. The Board said that if this is reviewed as a special permit, it will consider the architectural plans. Mr. Becker said that TLAG is an issue because this will be the largest house on Mansfield Road and surrounding streets.

Mr. Becker said that there are a lot of detached garages in Wellesley that are much closer to the lot line than this one. He said that he believes that the Building Inspector is issuing building permits for owners to fix up their homes even though they have nonconforming garages. Mr. Seegel said that the Board can deal with the garage and it is up to the Petitioner to convince the Planning Board that the project is not subject to LHR.

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

David Himmelberger, Esq., discussed nonconforming lots and if the nonconformity of the lot by virtue of the nonconforming garage otherwise removes the proposed addition to the house from LHR. He read an excerpt from the Zoning Bylaw regarding LHR exemptions and Section 17 regarding nonconforming structures, lots and uses.

Ms. Sainsbury-Wong said that Mansfield Road is part of a subdivision that was approved by the Planning Board on June 28, 1949. She said that under Section 18 of the Zoning Bylaw, it talks about properties that are not bound by district square footage. She said that her property was built before the map came into place that designated the districts. Mr. Becker said that the house was built before the town had a Zoning District

and so it is legally pre-existing nonconforming. Ms. Sainsbury-Wong said that it was a subdivision that was approved by the Planning Board in 1949 and is not subject to the same restrictions of size. Mr. Levy said that when the subdivision was approved dictates what the setbacks and dimensional requirements are. He said that 4 Mansfield Road meets all of the dimensional requirements. Mr. Becker said that the tables in Section 19 of the Zoning Bylaw specify which set of dimensions applies to this property.

Mr. Levy said that the only nonconformity is the garage. Mr. Seegel said that the Board will only deal with the garage. He said that he had no objection to proposed demolition and relocation of the garage, as proposed but without the breezeway. Mr. Levy said that it will be a one story garage and the height will not change.

Mr. Becker read the Planning Board recommendation.

Mr. Becker discussed the Water Supply Protection District, capturing the water from at least the addition and reinjecting it into groundwater unless it is not possible to do that. He said that the latest set of plans shows drywells and leaders coming down from the addition and the existing structure.

Mr. Becker said that the extenuating circumstance for allowing the decrease in setback is to get the garage off of the easement.

Mr. Levy asked if any consideration was given to having a driveway on the left side of the house, coming off of Mansfield Road. Mr. Kinsella said that would be too close to the corner and there is a minimum setback requirement. He said that they felt that would create a safety issue. Mr. Becker said that there cannot be two intersections within certain distances of each other.

Mr. Seegel moved, Mr. Levy seconded the motion, and the Board voted unanimously to grant a special permit to demolish an existing garage and rebuild as shown on a plot plan dated May 10, 2021, revised July 20, 2021. The proposed garage will be removed from the town's existing drain easement. The side yard will be decreased to 6.8 feet, with no breezeway or other connection to the proposed addition or the existing house. Mr. Levy said that Mr. Grant should know that the Board would not be making an explicit finding with regard to the house.

#### ZBA 2021-60, NANCY ERNE. 599 WASHINGTON STREET

Present on behalf of the petition were John Milbrand and Bruce Erne, representing Nancy Erne.

Mr. Milbrand said that the request is for renewal of a special permit that has been in existence since 1981 and renewed on a three year basis since then.

Mr. Milbrand said that there are side by side entrances on Washington Street and on Wiswall Circle. Mr. Becker discussed the definition of townhouse in the Zoning Bylaw. He said that a townhouse has a party wall. He said that this structure does not have that.

Mr. Levy said that there is no condition for owner occupancy. Mr. Becker said that this part of the neighborhood is a townhouse district, the two homes that are outbound from this one are single family residences, across the street is an eight unit apartment building and Wiswall Circle is at the back with 12 units or so. He said that the context of it suggests that notwithstanding who owns it, it is the right use for the property.

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

Mr. Becker read the Planning Board recommendation.

Mr. Seegel moved, Mr. Levy seconded the motion, and the Board voted unanimously to grant renewal of the special permit for a period of three years.

#### ZBA 2021-62, WILLIAM SHRIBMAN, 53 MARTIN ROAD

Mr. Becker said that the Board received a request to continue the petition to the September 2, 2021 hearing.

Mr. Seegel moved, Mr. Levy seconded the motion, and the Board voted unanimously to continue the petition to September 2, 2021.

ZBA 2021-63, JAMES QUINLAN, 870 WORCESTER STREET

Mr. Becker said that the Board received a written request to withdraw the petition without prejudice.

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

ZBA 2021-64, RAJEEV & MARCEL BHANGOO, 32 UPSON ROAD

Present on behalf of the petition were David Himmelberger, Esq., and Rajeev Bhangoo, the Petitioner.

Mr. Himmelberger said that the request is to modify an existing variance at 32 Upson Road. He said that the property received a variance in 1973 to construct a left side addition with side yard setback of six feet. He said that the survey shows that dimension at 5.8 feet. He said that the Petitioner wants to raze and rebuild the existing home and previously sought to reconfigure the common lot line between 32 Upson Road and 12 Princeton Road. He said that the Board advised that it did not have the jurisdictional power to grant that relief. He said that the Petitioner is now seeking a modification the existing variance in which the proposed new home will have a better nonconforming setback of 9.8 feet and in all other ways be compliant with the Zoning Bylaws. He said that the height will be 29.9 feet and TLAG of 5,190 square feet.

Mr. Himmelberger said that, in reviewing modifications to variances that the Board has granted in the past, the Board typically applied a standard of not substantially more detrimental. He said that the Board could conclude that this proposal will not be substantially more detrimental to the neighborhood.

Mr. Himmelberger said that the property sits downslope of side setback line. He said that 12 Princeton Road is upslope of the property.

Mr. Levy questioned whether the variance goes with the existing structure and once the house is removed, the variance is gone and a new variance has to be applied for. He said that the Board's practice with modification of variances was to not go to the criteria for granting a variance of shape of the lot, topography or soil condition, but took that for granted, based upon a prior Board's determination. He said that when this variance was granted, it was a totally different standard. He said that it pre-dated the current Zoning Statute. Mr. Himmelberger said that, similar to nonconforming homes where there is a pre-existing nonconforming structure on an otherwise conforming lot, the Board has allowed razing and rebuilding of the nonconforming structure in a new nonconforming setback.

Mr. Seegel said that typically when the Board permits demolition, the rebuild has to conform with the current Zoning Bylaw. He said that there may have been a couple of exceptions. He said that in this instance, there may be a way to meet all of the setback requirements. Mr. Bhangoo said that there is a significant slope at the back. Mr. Himmelberger said that the slopes up and a variance could be based on the trapezoidal shape of the lot or the topography. He said that what is before the Board is a request for a modification of an existing variance. Mr. Seegel said that this would have to be a new variance. He said that the existing variance goes away when the house is torn down.

Mr. Bhangoo said that the house has not been touched since it was built and the neighbors are begging him to tear the house down and do something with it. He said that it sits at the back of his house and they have seen raccoons going into it over the past four years after the person deceased.

Mr. Becker read the Planning Board recommendation. Mr. Levy said that the project would be subject to Large House Review.

The Board discussed the topography of the lot. Mr. Becker said that once the house is torn down, anything that is put in its place is self-created. He said that the hardship is that the house that the Petitioner wants to build is wider than the lot can handle. Mr. Levy asked if any effort was made to build a conforming structure. Mr. Himmelberger said that the topography rises approximately six feet at the rear.

Mr. Himmelberger asked if the Board would consider granting modification of the variance. Mr. Levy discussed precedence and a variance running with the land in perpetuity, regardless of the structure. He said that a variance is granted for a structure and the proposal is to tear it down. He questioned whether the request should be for a new variance, based upon the shape and possibly on the topography. He said that he was concerned about modifying a variance for this.

Mr. Becker said that he had concerns that the hardship would be self-created. Mr. Levy said that by allowing the old variance to stand, it would be spot zoning. He said that a determination by the Board by that the variance runs with the land would be spot zoning by creating a different setback from every other house in the district. Mr. Himmelberger said that was done in the first instance. Mr. Becker said that the Zoning regulations were quite different then from what they are today. Mr. Himmelberger said that they could come back with plans to envelope the existing structure at the five foot setback.

Mr. Levy asked if any effort was made to build a conforming house. Mr. Himmelberger said that the problem is to get a garage that meets the 30 foot side yard setbacks and the 500 Foot Rule. Mr. Bhangoo said that they looked at a lot of options.

Mr. Levy said that not much of the proposed structure would be in the setback. He asked about the size of the house. He said that the Town has made a determination that in a 10,000 square foot district, a house that is greater than 3,600 square feet is considered to be a large house. Mr. Himmelberger said that the Petitioner is prepared to go for Large House Review. – over TLAG threshold –

Mr. Seegel said that the old plot plan shows a swimming pool at the back.

Mr. Becker confirmed that proposed TLAG will be 5,190 square feet. Mr. Himmelberger said that approximately 1,000 square feet of that is in the attic. Mr. Levy said that the proposed TLAG exceeds the threshold for a 15,000 square foot district.

Mr. Seegel said that the house has to be set back from Upson Road because of the 500 Foot Rule. He said that by forcing it back, the lot slopes so much that they cannot fit anything in but a very small house. Mr. Becker said that if the topography is north/south, from Upson Road back, there may a stronger case for a variance for the front setback due to the topography. He said that pulling the house forward will give them more side yard setback, which may or may not be conforming. Mr. Himmelberger said that pulling it forward will not eliminate all of the nonconformity on the left side. Mr. Levy said that by pulling everything forward, they may be able meet the side yard setbacks with a smaller house. Mr. Bhangoo said that the house without the attic is 4,000 square feet.

Mr. Himmelberger said that the Petitioner initially tried to change the lot line to allow for a fully conforming structure but they were not able to do that under a special permit. He said that the Planning Board could not turn an ANR plan but the Petitioner needed relief because by changing the lot line, 12 Princeton would not have enough frontage under Table 3 dimensional requirements. He said that the Petitioner needed relief to change the property line because the new lot that was created at 12 Princeton Road would not have the 90 feet of frontage that is required under Table 3. He said that the Planning Board has taken the position that relief is needed if the lot is altered in such a way that it goes from a Table 1 to a Table 3 lot. He said that the Petitioner's first approach was to come to the Board for zoning relief on the lot line.

Mr. Levy said that the Petitioner has an argument to come back before the Board to request a variance from the 500 Foot Rule or for a setback due to the topography or the shape. He said that the Board does not have the authority to change the lot line. He said that the Board could consider a structure on this lot under a variance standard.

Mr. Seegel said that moving the structure 10 feet closer to the street would alleviate the problem to a good degree. He said that effort should be made to try to reduce the size of the house a little bit. Mr. Himmelberger asked about coming in for a new variance versus modifying the existing structure to resemble the proposed structure. Mr. Levy said that it is not a pre-existing nonconforming house. Mr. Himmelberger said that they would modify it because it would not be removed. Mr. Becker said that it would be a better house if there are fewer constraints. Mr. Seegel said that the Petitioner may be entitled to a variance on the side as well as the front. The Board said that it would need to see the topography of the lot. Mr. Levy said that effort should be made to not try to squeeze in as much as possible, resulting in something that is smaller.

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

Mr. Levy said that the Petition would have to be re-published if the request is changed to a variance. Mr. Seegel said that the filing fee will be waived.

Mr. Himmelberger requested that the petition be withdrawn without prejudice.

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

#### ZBA 2018-18 – AMEND, DAVID COLETTA, 39 ATWOOD STREET

Present on behalf of the petition was David Coletta, who said that he has a nonconforming house, a nonconforming garage and a nonconforming deck surrounding the house. He said that the garage is falling down and needs repair, which they have permission to do. He said that they have had time to think about the plans and have spoken with architects. He said that the intention is to make the garage look as good and be as functional as possible. He said that the house is approximately 1,500 square feet. He said that the family is currently using their living and dining rooms exclusively for four desks for computers. He said that the original plan was to expand the house in the corner but will not be done due to budget issues. He said that they would like to use the upstairs of the garage as office space.

Mr. Coletta said that the request is for a bump out that will look nicer. He said that his neighbor has one and it looks good. He said that they currently have a deck and stairs on the left which are nonconforming. He said that he would like to add stairs on the right side to access the kitchen via the deck off the back. He said that since the garage is so close to the house, connecting the two would be functional to use the garage space as an office.

Mr. Seegel said that the Board cannot allow plumbing in the second floor of the garage. He said that there can be electricity.

Mr. Becker said that when the Petitioner came before the Board in March of 2018, he told the Board that the upstairs in the garage was for storage. Mr. Coletta said that they are now not doing the expansion to the house and are looking for another place for office space.

Mr. Becker said that when the Petitioner came back before the Board in May of 2018, he confirmed that the second story of the garage was for storage and the full set of stairs would be inside the garage. He said that the Board discussed and Mr. Coletta agreed to making that pull down stairs because of interference with the garage.

Mr. Levy said that this is a difficult lot. He said that the request is to create a huge mass along the lot line. He said that the Planning Board was concerned about the creation of living space on the second floor of the garage.

Mr. Becker said that there are very few places that have exterior stairs, especially exterior stairs that are combined with a connecting deck. He said that the original finding that the Board had to make was that it was not more detrimental to the neighborhood. He said that the proposal is for things that are substantially

different. He said that part of the issue raised at the original hearing concerning the deck around the house and the rebuilt garage was that you would not be able to see from the driveway into the back yard because there was so much stuff there. He said that stuff went away in the revision and is now back in the plan and back a piece at a time. Mr. Coletta said that the first design had a breezeway that was removed.

Mr. Seegel discussed moving the deck further into the yard to create space. He said that whatever is built will require a special permit.

Mr. Coletta asked about using the second story of the garage as an office. Mr. Becker said that the Board does not have an issue with the use of the space but with getting up to the space. Mr. Levy said that the mass of the structure is an issue.

Mr. Coletta asked about the proposed bump out. Mr. Becker said that the bylaw does not care whether it looks good or not. He said that is a clear sign that the space will be used for more than storage. Mr. Coletta said that he was planning to put a desk in the bump out at the back of the garage. He said that he is asking for a bump out at the back and at the front. Mr. Levy said that the proposed structure looks like another residential structure.

Mr. Becker read the Planning Board recommendation.

Mr. Coletta asked about removing the deck extension from the request. Mr. Becker said that the request was for external stairs in addition to expansion of the deck to the garage.

Mr. Seegel discussed concerns with the bump outs.

Mr. Levy confirmed that Mr. Coletta spoke with the neighbors about the plans.

Mr. Seegel said that they will have to take the roof off of the existing garage and build up. He said that the garage can be built wider behind the deck to create an area on the second floor for storage and office space. He said that there can be no plumbing and the space cannot be used for sleeping or eating. He said that there is no plan before the Board to approve to make that kind of change to the garage.

Mr. Becker said that the existing house is also nonconforming. He said that connecting it to the garage would not change its status.

Mr. Coletta said that the deck is already seven feet from the left side and the stairs will be approximately 12 to 14 feet from the closest location to the side. He said that it will be around the back of the house.

Mr. Seegel said that this may not be more detrimental to the neighborhood but the Petitioner needs to look at a different way to solve this. He said that the two structures cannot be connected. He said that the issue is to create a larger garage with a second floor without plumbing. He said that it will probably need an interior stair. He said that there cannot be bump outs that make the garage look like a house. Mr. Levy said that only one dwelling per lot is allowed under the bylaw. He said that using the space as an office or for storage is not a dwelling. He said that a general rule for the Board is that there be no plumbing. Mr. Seegel said that there can be windows.

Mr. Becker said that the Board is not supportive of amending the existing special permit. He said that if the Petitioner wants to come back with a new plan of what he would like to do, the Board is willing to consider a special permit/finding for plans that are different from tonight's presentation. He said that the plan should not be put before the Board piecemeal.

Mr. Coletta questioned whether the Board did not consider the submittal as a plan. Mr. Becker said that it only gives the Board half of the things. He said that the Petitioner submitted a complete package for the original request in March of 2018. He said that the submittal for tonight's hearing was sketches of things and it is really hard to tell how things fit together. He said that when it went from March to May, there was an issue with TLAG and making things smaller. He said that it seems like the Petitioner is coming back a piece



at a time to be making it bigger. He said that it is not clear what the Board has approved or what they are approving. He said that the Board needs to understand that.

Mr. Coletta confirmed that what was before the Board at tonight's hearing was a request for amendment to the 2018 decision. Mr. Seegel said that it is really more than amendment of the special permit. Mr. Coletta said that the plan is to add stairs and an access ramp. Mr. Levy said that it is a different project.

Mr. Coletta said that they want to make the garage look like a house because their house does not look very attractive and the existing garage looks terrible. Mr. Becker said that more detrimental to the neighborhood means that there is something different about it that does not fit in with the neighborhood. He said that having decks and external stairs going hither and yon is not consistent with the neighborhood. Mr. Coletta said that he has a shared driveway, so his house is not really typical of houses in Wellesley.

Mr. Becker said that if Mr. Coletta puts together a project and applies for a special permit, the Board will review it.

Mr. Seegel said that if the plan is to increase the size of the garage, the Board will need to see drawings. He said that he did not think that the bump out works. He discussed potential to expand the garage towards the interior of the property.

Mr. Becker said that the materials that were submitted for tonight did not talk about how it impacts the Zoning Bylaw and why that was okay. He said that the Board was trying to figure out how it fits together and how it fits in with the Zoning Bylaw. He said that the Board needs to understand the concept and the details of what Mr. Coletta is trying to do, so that it is clear to some knowledgeable person who is trying to fit it in with the Zoning Bylaw. Mr. Seegel said that Mr. Coletta is looking for relief from the town's bylaws but the Board cannot give that to him based on what was submitted. He said that Mr. Coletta has to justify amendment of the special permit and show construction-wise what is planned. He said that it is not something that the Board can grant as a matter of right.

Mr. Levy said that the Board has to make a finding that the proposed renovation will not be substantially more detrimental to the neighborhood than the existing nonconformities. He said that it appears that the plan is to have two residential structures on one lot and the Board cannot grant relief for that.

Mr. Seegel suggested that the best way to proceed is to build on the back of the house. He said that there is room to do that. He said that it would still require a special permit but would be a lot easier to do.

Mr. Coletta confirmed that he can build the garage, as previously approved.

Mr. Coletta requested that the petition be withdrawn without prejudice.

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

#### ZBA 2021-65, NICOLAS ESCALLON, 12 BRYN MAWR ROAD

Present on behalf of the petition was Nicolas Escallon, who said that he and his wife grew up in Wellesley and recently moved back. He said that they have two kids and he had to work from home during the pandemic in the one spare room that they had planned to use as a nursery. He said that after exploring options that would allow for a work environment at home, they decided to convert the nonconforming detached garage to office space. He said that that project is permitted and underway. He said that the request is for a variance and or a special permit/finding to install an external ac unit/heat pump, mounted to the wall. He said that installation of the ac unit would intensify the nonconformity.

Mr. Escallon said that the ac unit will not be visible from the street or any abutting properties. He said that due to the small lot sizes in the neighborhood, it is not uncommon to have lots with less than required side and rear yard setbacks.

Mr. Escallon said that the ac unit will operate at a noise level of 57.5 decibels, which is just under what the CDC considers to be the level of a normal conversation. He said that since the space will primarily be used as an office, the unit will typically operate only within the hours of 9 am to 5pm, Monday to Friday. He said that they recently installed a solid fence that should provide some acoustic coverage. He said that the unit will be mounted lower than the height of the fence.

Mr. Seegel asked if Mr. Escallon spoke with the neighbor on the other side of the fence. Mr. Escallon said that he spoke with the neighbors on the eastern side of the property but have yet to speak to the neighbors on the northern side. He said that the neighbors on the eastern side were supportive.

Mr. Levy confirmed that the office is building built with a building permit as a matter of right.

Mr. Seegel said that he had no objection based on the noise level from the unit. He said that he did not think that it will disturb anyone.

Mr. Levy said that the Board has to determine whether the relief should be granted under a variance or a special permit/finding. He said that this will create a new nonconformity. He questioned whether there is basis for granting a variance based on the three criteria of shape of the lot, topography or soil condition.

Mr. Becker read the Planning Board recommendation.

Mr. Levy displayed a photograph of the left side of the garage. Mr. Seegel asked about moving the unit next to the door where it can be screened. Mr. Escallon said that his principal concern is that his kids run around back there all summer.

Mr. Levy said that the Zoning Bylaw provides that you cannot have ac equipment within the setback. He said that although there is a pre-existing nonconforming structure, installation of the ac unit will create a new nonconformity. He said that his opinion is that a variance would be required.

Mr. Becker discussed the Bellalta v Brookline case law. Mr. Levy said that ac condensers are addressed in a different section of the bylaw from Section 17. He said that this is a totally new nonconformity.

Mr. Seegel said that if the Petitioner wants to put the ac unit at the back, it would require a variance and this probably does not qualify for a variance. Mr. Levy said that the shape of the lot, topography or soil condition do not appear to be an issue here.

Mr. Escallon asked about putting the ac unit on the opposite side on the eastern face. Mr. Seegel said that he would not object if Mr. Escallon could get a letter from the neighbor that he has no objection. Mr. Levy said that would still be a variance because it would be in the setback. Mr. Becker said that if the unit is put next to the door, it will be close to being conforming because the rear yard setback requirement is 10 feet. Mr. Seegel said that the ideal place to put the unit is on the front. Mr. Becker said that there may be a place where the unit can be installed where it will meet the setback requirements.

Mr. Levy asked about the width of the existing garage. Mr. Escallon said it is approximately 12 feet wide. Mr. Becker said that the existing nonconforming side yard setback of 6.8 feet could be improved and approved with a special permit. Mr. Escallon said that he could probably not get 10 feet from the fence, so the only option would be the front.

Mr. Becker said that the decibel charts states that 57.5 decibels fall in a category of either a car passing by 30 mph at 100 feet or urban area conversational speech or tv in quiet room or microwave at 2.5 feet. He said that the noise generated from ac units has improved considerably since the bylaw was adopted.

Mr. Escallon discussed former Zoning Board decisions. He said that in 2004, there was previously a structure in the location where they are currently proposing the ac unit. Mr. Levy said that is now abandoned.

Mr. Seegel discussed continuing the petition and having the Applicant submit an amended plot plan that show the unit next to the door or on the front side. Mr. Becker said that if it is located on the front, it will be a special permit because it will not be a new nonconformity. He said that the garage is already 6.8 feet.

Mr. Levy said that the amended plot plan should have the dimensions of the structure.

Mr. Levy moved, Mr. Becker seconded the motion, and the Board voted unanimously to continue the petition to September 2, 2021.

As there was no further business to come before the Board, the hearing was adjourned at 9:28 pm.

Respectfully submitted,

Lenore R. Mahoney  
Executive Secretary