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WALTER B. ADAMS
DEREK B. REDGATE
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October 7, 2021

7:30 pm

Public Hearing

Town Hall, Juliani Meeting Room

Zoning Board of Appeals Members Present:

Robert W. Levy
Walter B. Adams
Derek B. Redgate
J. Randolph Becker
David G. Sheffield

PUBLIC HEARING**ZBA 2021-56, EDWARD & MICHELLE JACOBS, 97 RUSSELL ROAD**

Present in behalf of the petition were Edward and Michelle Jacobs, the Petitioner, and James Goodhue, Esq.

Mr. Goodhue said that the Petitioners were before the Board in August. He said that they submitted a revised set of plans.

Mr. Levy asked for a description of what has changed.

Ms. Jacobs said that planters that are shown on the original plot plan have been taken away. She discussed relief for the setbacks. She said that they spoke with the Planning Department and Michael Grant, Building Inspector, who helped them to set the definition of each of the sides of the property. She said that it is a nonconforming lot where the frontage abuts Russell Road by 20 feet. She said that 20 feet is defined as the frontage and also the front yard setback. She said that the west side of the property which abuts Morses Pond is the rear setback, and all other sides considered to be sides. She said that the north of the property that abuts the neighbor is a side setback, the east and the west property lines that abut town land are also side yard setbacks. She said that Michael Grant helped them to define those setbacks, based on the definitions.

Mr. Goodhue said that Russell Road terminates at the lot with a 20 foot width. He said that, according to the Building Department, the front yard is considered to be that section of the lot that abuts Russell Road. He said that the same lot line, running on the northerly boundary, is also to be construed as a side yard. He said that it is a very unusual situation. He said that he outlined in his letter the specific areas where they are seeking relief, based on the input from the Building Department. He said that what has changed is what is considered to be the front yard of this property and what the side yards are. He said that the location of the proposed structure has not shifted at all.

Mr. Goodhue said that virtually every house on the street has needed a variance of some sort. He said that there is only one house on the street that was redeveloped and did not need relief. He said that because of the shape of this lot, in order to comply with the setbacks, the house would be 10 feet wide through the course of the lot.

Mr. Goodhue said that the proposed structure will be less nonconforming. He said that a portion of the existing structure encroaches on town land. He said that in a prior case from 1988, the Board said that it would not address the application until the town land encroachment issue was addressed. He said that the proposed project will get rid of the encroachment on town land. He said that, with respect to greater intensity of the nonconformity, it is not because the encroachment is disappearing. He said that it will be a less intense nonconformity. He said that the request is for a special permit because it is a pre-existing nonconforming structure. He said that they are also seeking variances for the front and side yard setbacks.

Mr. Levy said that the encroachment is not a Zoning issue but is between the property owner and the town. He said that the Board would not be granting relief for that and it is not before the Board. He said that it appears that the requested relief is for a variance for the front and side yard setbacks.

Mr. Becker said that the definition of front yard does not comport with Mr. Grant's opinion because the front yard is measured from the 20 foot line to the building and the new building is over there not here. He said that this is a teardown and rebuild on an unusual lot. He said that looking at the building on the lot in the east-west direction, there is no real issue because the lot is long enough to keep the front and rear yards from being an issue. He said that in the north-south direction, the width of the house would be 14 feet wide.

Ms. Jacobs said that they had multiple meetings with the Wetlands Protection Committee (WPC). She said that they came to an impasse because there was a Board member who could not say that they had a hardship in order to move the footprint of the house to resource land. She said that the 100 foot buffer is approximately 90 percent of the land. She said that there is no definition of hardship in the WPC bylaws. She said that WPC recommended that the Jacobs try to buy the land that they encroach on from the town so that they could rebuild in the same spot. She said that the town's answer was no. She said that the second option was to go to the ZBA for definition of a hardship, to get guidance and then go back to WPC.

Mr. Goodhue said that the retaining walls will also have to be ruled upon. He said that he included that request in his letter. Mr. Levy said that was not published. He said that the neighbors were not notified of that relief.

Mr. Levy said that he thought that the relief should be a variance. He confirmed that nothing has changed on the project. Ms. Jacobs said that the building is the same but they added three air conditioning (ac) units on the north side, 10 feet 3 inches from the property line, which the side yard setback. Mr. Levy said that the Board cannot grant relief for that tonight because it was not noticed or published.

Mr. Becker discussed required relief. He said that a variance is needed for the side yards, a variance for Section 19C and 10 foot from town property, a variance for the ac units in the setback, and a special permit for the retaining walls.

Mr. Adams asked if the plans were shared with neighbors and if so, is there any record of responses. Ms. Jacob said that a letter of support that was signed by most of their neighbors was submitted, as well as a separate letter from one of the neighbors. She said that they shared the plans with all of their neighbors on Russell Road.

Mr. Adams said that the proposed structure is fairly large, significantly larger than the existing structure. Mr. Goodhue said that the TLAG will be under the threshold for Large House Review at 3,045 square feet.

Mr. Becker said that there are three issues that the Board should consider. He said that the first one is the WPC, the second is construction and protection in proximity to Morses Pond, it is a tough lot and how to build on it while staying on the lot.

Mr. Levy read the Planning Board recommendation.

Mr. Goodhue said that the two matters that are in the original application are still viable but they need to supplement it with an application for the retaining walls and the ac units. Mr. Levy said that the Board will need to see manufacturer's specifications for the ac units, screening and mitigation.

Mr. Goodhue said that they decided to site the ac units on the north side. Mr. Levy said that they would be less impactful on the south side where there is town land. Ms. Jacobs said that there is a town trail on the south side.

Mr. Levy said that the Board will want to see a Construction Mitigation Plan (CMP) to show how the project will be built and whether they will need off-site for stockpiling, parking for contractors, and deliveries. He said that it will be a difficult project to build.

Mr. Adams asked about the owner of the large parking area adjacent to the property. Mr. Jacobs said that land is owned by the Water Department. He said that many of their neighbors have done construction with similarly difficult lots, so they have a good sense of what is necessary to go forward.

Mr. Becker discussed being 10 feet from town land. He said that when this originally came to the Board, there were 5 foot and 10 foot side yard setbacks that were reversed from the way that they are. He said that when they were revised to put the 10 feet on the neighbor's side, that is what makes the 10 foot variance necessary. He said that would include the one foot setback that is east-west on the garage, which the Board should be mindful of before taking action on the 10 feet.

Mr. Adams asked that any plans that are submitted be full size.

Mr. Levy discussed moving forward with a continuance versus withdrawing the petition without prejudice. Mr. Goodhue asked that the petition be continued to December 2, 2021.

Mr. Levy asked that the Planning Board recommendation be sent to Mr. Goodhue.

Mr. Becker moved, Mr. Adams seconded the motion, and the Board voted unanimously to continue the hearing to December 2, 2021.

ZBA 2021-84, JAMES CARNEY, 962 WORCESTER STREET

Mr. Becker said that, according to the Assessor's records, the property owner is Donald Realty Trust, not James P. Carney. Mr. Levy said that he is familiar with the property. He said that Bernardi is the ground lessee. Mr. Redgate said that there is a letter on file with the Wetlands Protection Committee. Mr. Levy said that the property is owned by a realty trust and there is an LLC who is the assignee of a ground lease. David Himmelberger, Esq. said that he will send confirmation of the ground lease to the Board.

Mr. Himmelberger said that the property is located on Route 9 near the Natick border. He said that it has been a variety of automobile dealerships. He said that it is located next to Jarvis Appliance. He said that it is now becoming Bernardi Nissan. He said that the request before the Board is for replacement signage. He said that the Board has previously issued a number of special permits for signage, the most recent being in 2013-08 for a 15 foot tall standing sign and 2011-19 for three walls signs and a standing sign. He said that

the current request is for a special permit for four walls signs and two standing signs. He said that the wall signs will be compliant for height and letter height. He said that none of the signs will be internally illuminated. He said that the total area of the four wall signs will be 87.48 square feet where 75 square feet is allowed. He said that two of the wall signs are permitted as of right and they are seeking an additional two wall signs. He said that the request is for three of the walls signs to be at a height of 30.7 feet. He discussed the proposed standing signs. He said that the tablet will be 6.89 square feet on each side with an E on both sides to indicate to traffic in each direction on Route 9 that there is an electronic charging station. He said that the monument sign is located one foot from the property line where 15 feet is required.

Mr. Himmelberger said that he was retained after the sign representative learned that the ZBA hearing was in person, which their company does not allow during Covid. He said that the preference is to pull the monument sign back 15 feet and make it smaller.

Mr. Himmelberger said that the request is for approval of four walls signs and two standing signs, with monument pulled back to 15 feet, with a smaller façade but a taller sign. He said that there are vehicles parked in the front for display. He said that additional request will have to be advertised and the hearing for that continued. He requested that the Board approve a second standing sign at this hearing so that they can begin construction on the base.

Mr. Himmelberger said that the DRB reviewed the plans and voted unanimously to accept the application, with recommendations that the Nissan Tablet Sign be externally illuminated and not connected to a power source and the Nissan Tablet Sign on the building be reduced to fit the panel so that it does not overhang the windows. He said that has been done. He said that DRB requested that the monument sign be externally illuminated and not connected to a power source and landscaped at the base to serve as a buffer to nearby parking spaces.

Mr. Sheffield said that the Hancock survey is lacking detail of what is being proposed. He said that there are no dimensions. He discussed potential conflict with the light poles where the bases are already installed. He said that the monument sign will have to be in alignment with the existing light poles. Mr. Himmelberger said that the proposal is to pull it back 15 feet and accept a condition that an accurate, dimensioned plan will be submitted to the Board at the continued hearing. Mr. Sheffield said that the light poles should be shown on the survey. He said that one of the things that the Board will be concerned about is the sight lines for cars exiting onto Route 9.

Mr. Sheffield asked about the fixtures for external illumination of the wall signs. He said that the monument sign could be lit from a light pole with outriggers, or in the ground or at the base of the light pole.

Mr. Becker asked if the EV charging system is owned by Bernardi or a separate business. He said that if it is owned by a different business, there can be another sign.

Mr. Himmelberger summarized the request for four walls signs, Bernardi, Nissan Emblem, Nissan signs on the band that require a special permit because they are more than 20 feet off the ground at 30.7 feet, the total number greater than two, and combined square footage of the signs at 87.48 square feet where 75 square feet is the maximum area allowed without special permit. He said that, with respect to the two standing signs, the request is, in combination with the four walls signs, to be in excess of the two that are allowed as of right. He said that the request is for less than 15 foot setback for the EV sign and for a continuance for the monument sign with a 15 foot setback and 15 feet tall with a smaller face.

Mr. Adams asked where the monument sign is proposed to be located. Mr. Himmelberger said that it is proposed to be back 15 feet from where it is currently located. Mr. Adams asked about the open space to the right of the entry area for servicing vehicles. Mr. Himmelberger said that area is not a thru way between Worcester Street and the building.

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

Mr. Becker read the Planning Board recommendation.

Mr. Sheffield asked if the current design of the base of the monument sign will be suitable for a taller sign. Mr. Himmelberger said that it will be a taller version and more narrow. Mr. Sheffield confirmed that the size of the base is not currently known. Mr. Himmelberger said that it will not be a pylon but a monument. He said that the existing monument had a 7.5 by 8.2 foot base, and the face of the monument was 6 feet 11 inches by 6 feet 2 3/8 inches. He said that the proposed sign will be a taller version. Mr. Adams said that sign should be addressed at the continued hearing. Mr. Himmelberger asked if the Board would agree to recognize the existence of a second standing sign at that location of a height to be determined by the Board. He said that would allow construction of the base to go on at this point. He said that the sign will be consistent with past relief that was granted. He said that he is looking for approval of a sixth sign. He requested that the Board vote favorable action on the four walls signs, the tablet sign and the second standing sign to be located 15 feet back, the height for which to be determined by the Board at a continued hearing.

Mr. Sheffield said that he agreed with Mr. Adams that the monument sign and its base should be designed together and constructed in the sequence that they are supposed to be constructed. Mr. Adams said that he did not see a problem with the monument sign getting approved at another time.

Mr. Adams moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to approve a special permit for Signs D,C,B,E and G, as shown on Page 3 of 18, subject of incorporation of the DRB's comments and signature of the property owner.

Mr. Adams moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to continue the petition for the Monument Sign to (Sign A) to December 2, 2021.

ZBA 2021-74, WELLESLEY HISTORICAL SOCIETY, 323 WASHINGTON STREET

Present in behalf of the petition was Jared Parker, President, Wellesley Historical Society. He said that the request is for renewal of a special permit, which will be the fourth since they purchased the property in 2013. He said that the only change is that the property is now located in a single building historic district. He said that they had a very successful campaign during the pandemic and were able to pay off the mortgage and now own the property outright. He said that they plan to use the property as originally decided.

Mr. Sheffield said that in the earlier applications, there was discussion about the use of the property for third graders and events that might have as many as 75 people. He said that there was a long discussion about parking and what would happen in those instances. He said that there was also discussion about triggering of ADA compliance.

Mr. Parker said that discussions regarding those issues are ongoing. He said that they plan to get people in when they can do that safely. He said that they have an agreement with the Unitarian Universalist Church that any parking off-hours does not interrupt church events. He said that any of the Historical Society's events will be during off peak hours for the most part. He said that they may return to in person meetings in the next year or so, which will involve 12 members at 6 pm. He said that the house is not tight enough to move the collections there yet. He said that they need to waterproof the basement and HVAC and other capital improvements. He said that they completed the ADA bathroom and there is discussion of adding an ADA ramp when the time comes. He said that they need to do all of their upgrades piecemeal so that they do not trigger ADA and Building Code compliance that they are not ready to handle.

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

The Board discussed granting the special permit for two or three years and renewing the conditions of the previously granted special permit.

Mr. Levy read the Planning Board recommendation.

Mr. Redgate moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to approve renewal of the special permit, subject to the same conditions, for 2 years.

ZBA 2021-74, JOSE MARTINEZ-LORENZO, 4 LARCH ROAD

Present in behalf of the petition were Jose Martinez-Lorenzo, the Petitioner, David Himmelberger, Esq., and Charles Kraus, Architect.

Mr. Himmelberger said that the request is for a special permit for razing and reconstruction of the pre-existing nonconforming dwelling currently located on site. He said that the house was originally built in 1946 and sits on a lot containing 11,235 square feet in a SR10 District and a Water Supply Protection District (WSPD). He said that the Historical Commission previously determined that the existing is not preferably preserved. He said that the existing home has a right side yard setback of 12.8 feet, with frontage of 70 feet. He said that the proposed home will retain the right side yard setback of 12.8 feet but will be conforming in all other aspects. He said that the proposed height will be 35.4 feet and TLAG will be 5,031 square feet, in a SR 10 District where 3,600 square feet is the trigger. He said that because the house is located in a WSPD, two underground infiltration systems are proposed to take all roof runoff. He said that the existing lot coverage is 1,021 square feet, or 9.1 percent and the proposed lot coverage is 2,441 square feet, or 21.7 percent, which is beneath the threshold. He requested approval of a special permit.

Mr. Levy said that it looks like everything is conforming except for the garage, which was detached at one point and may still be detached. He said that at some point in time a deck was built. He said that he would like to know when the deck was built. Mr. Himmelberger said that he did not know when the deck was built but it is all connected now.

Mr. Martinez-Lorenzo said that he looked at town maps and found one from 1991 that shows the deck already there. He said that he bought the property in 2013. Mr. Levy said that, in looking at the old permits, the deck did not appear to exist. He said that a plot plan from 1974 does not show the deck.

Mr. Levy confirmed that the intent is to use the garage as the setback. He said that he did not see why a conforming house could not be built on this lot. Mr. Adams asked if any effort had been made to design a conforming structure. Mr. Levy said that it is an oversized lot in a 10,000 square foot district with enough frontage. Mr. Kraus said that the lot is rather narrow. Mr. Himmelberger said that part of the challenge is that the house would only be 30 feet wide. He said that there would be no way to put a garage on without it being all garage in the front. He said that they could not have a side facing garage because of the 30 foot setback requirement.

Mr. Levy said that he was not sure if connecting the deck makes the garage part of the house.

Mr. Levy read the Planning Board recommendation.

Mr. Himmelberger said that the building height is shown on the Plan of Land. He said that they are proposing to put two underground infiltration systems in.

Mr. Levy confirmed that it will be a two car garage. He said that it appears to have four doors. He said that it is a lot of garage at the front of the house. Mr. Martinez-Lorenzo said that they tried to move the garage to

the back but there was an issue with making a right turn and proximity to the neighbors. He said that they tried to keep the side of the house at the existing setback. He said that the neighbors requested that they keep the windows at a minimum of 20 feet. He said that they would like to keep the one story garage, moved to the front, so that they can see their children playing. He said that they will be able to park two cars in the garage. He said that this is the third set of plans. Mr. Kraus said the plan was designed to accommodate the neighbor's request to keep the house at 20 feet for the most part and only encroach in the setback with the garage, as it is now. He said that at 23.4 feet, it is not a very wide garage. Mr. Levy said that it will be 26 feet long and the existing garage is substantially less than that. He said that it is a very big house for the lot.

Mr. Redgate said that a TLAG of 5,000 square feet where the threshold is 3,600 square feet is not close to conforming. Mr. Levy said that it seems like they could get a 3,600 square foot house within the setbacks on this lot.

Mr. Redgate asked if there is any information about the size of the abutting houses. Mr. Himmelberger said that the house on the right was rebuilt and is taller than this. He said that it was built up on two feet of additional fill.

Mr. Kraus said that it is one of the larger lots in the neighborhood.

Mr. Levy discussed concerns about a one car detached garage morphing into granting relief for two stories with a much longer extension into the setback. He said that the GIS shows it as a detached garage. Mr. Himmelberger said that the aerial shows the deck.

Mr. Redgate asked what is driving the size of the structure and what was done to mitigate the size and mass of the house.

Mr. Himmelberger said that the Assessor's records show that 5 Larch Road has a Total Living Area of 4,290 square feet.

Mr. Adams said that this is more house than he is comfortable with. He said that they have the opportunity to comply on the lot and they seem to be seeking a reason to not comply. He said that when you have a large enough lot that you could comply and try to take advantage of an existing nonconformity to provide more square footage that leads to a higher TLAG, that shows that they are trying to overdevelop the site.

Mr. Redgate said that the lot is restricted in width. He said that the setback relief may not be as obvious. He said that he was concerned about the size of the house in a 10,000 square foot district.

Mr. Himmelberger asked if the Board would consider a request for continuance to the December 2, 2021 public hearing so that the plans can be refined.

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

Jeff Novins, 6 Larch Road, said that he has been a neighbor to Mr. Martinez-Lorenzo for five to six years and has watched his family grow. He said that Mr. Martinez-Lorenzo showed him the plan last spring. He said that he was concerned about the height and the windows. He said that plan had the entire home at the 12.8 foot offset. He said that they told Mr. Martinez-Lorenzo that it was a non-starter. He said that they suggested moving the garage to the front to allow for more back yard. He said that the new plan did a good job with the shoulder of the house. He said that he is okay with the offset for the garage. He said that it will be a larger nonconformity, longer, wider and higher. He said that it would be good to have plenty of evergreen screening and things like that. He said that it will be very large and the back of the house will extend into his back yard. He said that his neighbor on the other side has the same issue. He said that they

built his house conforming. He said that an existing garage was made conforming. He said that he would like to see a new plan that the Board can be happy with as well.

Mr. Redgate said that, although they do not have to meet all of the requirements for an application through the Planning Board, it would be helpful to have information regarding mitigation such as a landscaping plan, a drainage plan and a lighting plan that can be shown to the neighbors. He said that there may be a clever way to reduce the size of the house while still maintaining all of the features that the homeowner wants.

Mr. Levy said that the petitioner may want to consider seeking a variance for a side facing garage, based on the shape of the lot. Mr. Redgate said that the Board has seen many skinny lots with garages at the front, which has been a problem for the neighbors because they are different in character.

Mr. Martinez-Lorenzo said that they considered raising the base floor and putting the garage under the house. He said that having a garage in the back will block view of the children playing. He said that after the neighbor had concerns with the plans for the house in the setback area, they moved the garage to the front at the setback for the existing garage. He said that without using the existing setback, the garage would be narrow and take up the front of the house. He said that it is difficult to get the turning radius.

Mr. Kraus said that they tried a design with the garage at the back at a 12.8 foot setback. He said that you had to maneuver around to get into the garage. He said that they had less square footage overall. He said that having a story and a half over the garage felt more imposing to the neighbor.

Mr. Levy said that it is a decent size lot and there are a lot of smaller lots in town.

James Daley, 2 Hickory Road, said that his property is on the north side facing 4 Larch Road. He said that Mr. Martinez-Lorenzo made some effort so that Mr. Daley's family is in their back yard, they are not looking at a wall of a house. He said that he would like to see some greenery along the way. He said that there are two trees at the line on Mr. Martinez-Lorenzo's property. He said that the roots are shallow and extend under the fence line. He said that the roots have ripped up their driveway and pushed water into their house. He said that the trees are approximately 40 to 50 feet tall. He said that contractors have told him that fixing his driveway will kill those trees. He said that his neighbors deserve to build a beautiful home. He said that his concern is for his family and the water aspect with the trees. He asked if he could request that the trees be cut down. He said that he had general questions about construction noise that would affect his son who has severe sensory issues.

Mr. Levy said that the trees would be subject to the tree bylaw. He said that most of the work is on the south side, not the north side. He said that the Board would like to see drainage calculations or an engineering plan that shows where the water coming off of the roof will go. Mr. Himmelberger said that the plan is to have two infiltrations systems. Mr. Kraus said that they showed proposed locations for the infiltration systems but nothing has been designed yet.

Mr. Redgate said that a planting plan can show tree protection, what trees will be taken down and screening. Mr. Kraus said that the trees will eventually have to be checked out by an arborist.

Mr. Adams moved, Mr. Redgate seconded the motion, and the Board voted unanimously to continue the hearing to December 2, 2021.

ZBA 2021-76, DANA CHAFFEE, 34 BROOK STREET

There was no present in behalf of the petition present at the public hearing.

ZBA 2021-77, STEPHEN MAIRE & STEPHANIE KIM KADOHATA, 66 DENTON ROAD

Present in behalf of the petition was Stephen Maire, the Petitioner, who said that the request is to be allowed to put a deck on the house, off a slider in the house, replacing an existing stairway, in an effort to give a little bit of private area where he and his wife can sit outside of the house. He said that it is a relatively small lot. He said that the deck fits into a niche between a forward and rear section of the house.

Mr. Levy said that the request is for a variance. He said that the lot size is 8,682 square feet in a SR10 District. He said that the requested relief is for the lot coverage from 25 to 25.9 percent.

Mr. Levy discussed special permit versus variance standards. He said that this is a square lot and there was no topographical or soil condition information submitted. He discussed the Board's authority to make a finding for the requested relief.

Mr. Adams asked if there is currently a deck there of the same size as what is requested. Mr. Maire said that there are stairs that come out of the slider down to the ground. He said that expanding the existing landing will fill in the gap between the house sections.

Mr. Levy read the Planning Board recommendation.

Mr. Levy said that it is not a dimensional issue, so the nonconforming setbacks are not relevant to the lot coverage issue. Mr. Maire said that excess square footage is under 150 square feet. He said that it will be a 9.5 by 15 foot new structure. He said that existing lot coverage with the stairs is 25 percent.

Mr. Adams said that the porch appears to continue to the exterior wall that has the bay window.

The Board discussed shape of the lot.

Mr. Maire said that their effort is to achieve some level of privacy.

Mr. Adams asked about reducing the size of the deck. Mr. Maire said that does not work mathematically. He said that the deck is the entire coverage.

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

Mr. Adams said that the Board received a letter from a neighbor across the street who had no objection to the project. Mr. Maire said that he spoke with all of the neighbors.

Mr. Levy said that this is a tough situation. He said that the issue is the Board's authority to grant the requested relief. He said that it is de minimis. He said that if existing lot coverage was over 25 percent, relief could be granted under a special permit.

Mr. Levy discussed allowing the petition to be withdrawn without prejudice. Mr. Maire requested that the Board allow the petition to be withdrawn without prejudice.

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

ZBA 2021-78, KAYLA SHEETS & KIRIL SELVEROV, 27 ATWOOD ROAD

Mr. Levy said that the request is for a variance. He asked that the Petitioner address the standards for granting a variance.

Mr. Selverov said that the request is for approval for the location of air conditioning condensers (ac). He said that the way that the house was built, it can be ducted almost everywhere except for a room on the right. He said that because of that, they need to have two condensers with a mini split. He said that they looked at all of the possible locations for the condensers and chose what is best. He said that the location is identical to the neighbor's condenser.

Mr. Levy asked about efforts to make the ac conforming. Mr. Selverov said that they would like to have had them in the back yard but there is a deck and a sliding door at the back. He said that they have a door that leads to the basement at the back left corner. He said that the terrain is inclined, so there is no possibility of putting the ac in the back yard. He said that there is no possibility of putting the ac on the driveway side because they would block the cars. He said that their neighbor's driveway is on the right side of this property. He said that placing the ac on the right would make them visible. Mr. Adams said that the right side yard setback is already nonconforming.

Mr. Levy discussed the options of putting the ac in the left side or the rear. He asked if the ac could be put under the deck. Mr. Selverov said that would not be possible. Mr. Levy asked about putting the ac between the paved area and the house. He said that mini splits seem to be small units. Mr. Selverov said that there is no space where they can go on the driveway.

Mr. Selverov said that the advantage of the proposed location is that will not be seen because they can be screened with bushes, similar to what the neighbors have done. He said that he spoke with all of the neighbors who all agree that the proposed location is good. He said that the decibel level will be below the requirement.

Mr. Levy said that he reviewed the manufacturer's specifications and it appears that the units will have a level as low as 70 decibels. Mr. Selverov said that there will be two condensers.

The Board discussed turning the mini split to fit into the nook to be compliant. Mr. Adams asked a full condenser is needed. Mr. Selverov said that they were told that it was needed. He said that they cannot duct the side room.

Mr. Redgate asked if there is a photograph of the back yard showing topography.

Mr. Levy asked what is under the deck. Mr. Adams said that there can be maintenance problems with an ac under a deck. Mr. Selverov said that he did not know the height of the deck off of the ground. He said that it is not possible to get under the deck.

Mr. Adams said that not enough information was submitted to show the Board that the petition meets the statutory requirements for a variance. Mr. Levy discussed the standards for granting a variance. He said that there is a sloped back but that does not appear to prohibit putting the ac there. He said that having a topographical issue does not mean that you are entitled to a variance. He said that it has to relate somehow to the relief that is sought.

Mr. Redgate said that it is very unusual to have ac at the front of the house, even when they are screened. Mr. Selverov said that their neighbor has ac in the front. He said that the proposed units will not be visible.

Mr. Levy said that the petitioner should look at other locations for the ac that would be compliant. He said that the mini split is not wide.

Mr. Levy read the Planning Board recommendation.

Mr. Levy said that this is an 11,000 square foot lot. He asked if any contractors had helped the petitioner look for solutions. Mr. Selverov said that the contractors looked everywhere.

Mr. Redgate confirmed that the room on the right is on a slab with no basement and that is the room that the mini split is for. Mr. Levy said that the mini split might fit into the nook or at the back.

Mr. Levy discussed allowing the petition to be withdrawn without prejudice.

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

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

ZBA 2021-79, ANDREW FAGENHOLZ, 26 CAVANAGH ROAD

There was no present at the public hearing in behalf of the petition.

ZBA 2021-80, THOMAS TAYLOR, 49 WALL STREET

Present at the public hearing in behalf of the petition were Thomas Taylor, the Petitioner, and Michael Hally, Architect.

Mr. Taylor said that the objective is to configure the house that he and his wife have lived at for 25 years to allow them to retire in place, without knocking it down. He disclosed that he is a member of the Wellesley Planning Board but did not participate in their deliberations for the recommendation.

Mr. Hally said that the plan is to make it a more workable house that is easy to get into, and have the ability to enjoy the lowest level and add a bedroom upstairs that is more to a modern lifestyle. He said that the garage is narrow and not useful. He said that the plan is to remove the existing one car and the existing covered portico to the mudroom and move a new one car garage forward, build a mudroom behind it and a small family area addition at the back. He said that they will put a portico on the front that can be built by right. He said that they will build a new bedroom on top of the new garage and mudroom, dormered on the front and back to retain the appearance of the existing house and allow them to pick up space for a bathroom and a walk in closet. He said that there will be a new side entrance that is not shown on the plans but will be less than 25 square feet.

Mr. Levy asked if the only nonconformity is the left side yard setback. Mr. Taylor said that the overhang to the second floor is nonconforming for the front yard setback. Mr. Hally said that the new garage will be 31.5 feet from the front property line. Mr. Redgate said that the existing nonconforming left side yard setback is 19.8 feet and the proposed left side yard setback will be 19.2 feet. Mr. Hally said that on the A-2 Elevations, the silhouette of the garage projects further into the setback. He said that the full dormer at the back with the door to the mudroom and the small window is at 19.8 feet.

Mr. Hally said that the garage was a huge driver for this project. He said that it is too narrow. He said the standard size is 11 feet 8 inches. He said that by picking up the seven plus inches, they will get to 11 feet 6 inches, wood to wood. He said that is enough to give them more storage inside. He said that there is currently enough room on the right side but not enough on the driver's side.

Mr. Levy asked about replacement of the air conditioning unit. Mr. Taylor said that the existing unit is where the proposed addition will be. He said that the new will go at the back, not located in the setback area.

Mr. Levy discussed State Case Law, *Bellalta v Brookline*, that addresses exacerbating an existing nonconformity under a special permit.

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

Mr. Levy read the Planning Board recommendation.

Mr. Levy read two letters of support from neighbors.

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

ZBA 2021-81, XIUYAN LI & BINGTAO YIN, 23 LAWRENCE ROAD

Present at the public hearing in behalf of the petition was Tom Timko, Architect. He distributed updated plans dated 10/7/21.

Mr. Adams confirmed that it will be a new dwelling. He asked if the only nonconformity is the 19.5 feet. Mr. Timko said that the primary request for relief is for a side entry garage. Mr. Levy said that is for a variance. Mr. Timko said that they are looking to expand the front porch using the 50 square foot exemption. He said that there was a question related to that, so they included it in the request for relief. He said that the question is if the overall porch is larger than 50 square feet, would that nullify the 50 square foot exemption or would 50 square feet of a larger porch be allowed in the setback.

Mr. Timko said that the two bays shown on the original plans that were submitted have been consolidated to one bay. Mr. Levy said that the Building Inspector will look at the plot plan that the Zoning Board approves. He said that the Board would not be granting relief for the bays. He said that the request is for relief for the setback for the side facing garage.

Mr. Timko discussed the history of the property. He said that it is the result of a taking by the town by eminent domain in the 1950's where they took 8,000 square feet and made it almost impossible to build something there. He said that the town subsequently gave the owner a variance to build on the lot. He said that the building plans were already underway when the taking occurred. He said that the existing building was allowed to be built 8 feet from the property line. He said that they tried to meet the setbacks for the proposed house. He said that the only issue was whether to have a giant garage at the front with a small door next to it or have a side entry garage looks like house rather than garage and presents better to the street. He said that the 30 foot setback will not be met. He said that the current dimension in architectural graphic standards 25 feet, which they will not meet but will be a lot closer to. He said that a side entry garage made the most sense.

Mr. Adams asked about the use of the town land. Mr. Timko said that it is used for the Hardy School as the back end of the playing fields. He said that part of the fields is not marked up for any particular purpose. He said that it is a big field and the school is far away. Mr. Adams said that there is a path from the end of the street that leads to the school. Mr. Timko said that it is a dead end street and there is not much traffic there.

Mr. Levy asked about the area between 23 and 21 Lawrence Road. Mr. Timko said that there is a little bit of lower vegetation but the lot is currently pretty barren. He said that there is a tree in the front and a couple of trees at the way back. He said that there are some low bushes.

Mr. Levy discussed the purpose of the bylaw regarding turning radius and headlights issues for the neighbors. Mr. Timko said that there is nothing on that side. He said that the school is several hundred feet away.

Mr. Levy read the Planning Board recommendation.

Mr. Timko said that there was some confusion about the proposed front porch. He said that when he spoke with the Building Inspector, it was not clear whether the full size of the porch had to be no greater than 50 square feet or whether 50 square feet could be into the setback. Mr. Levy said that it subject to the Building Inspector's decision as he is the Zoning Enforcement Office who interprets the Zoning Bylaw. He said that he did not think that was a decision for the Board to make unless someone appealed the Building Inspector's opinion. Mr. Adams discussed having a front porch that does not encroach into the setback. Mr. Timko said that the actual encroachment into the setback will be less than 50 square feet. Mr. Levy said that Mr. Timko should present that to Mr. Grant, and if he disagrees, his decision can be appealed and the Board will decide.

Mr. Redgate asked about the structure at the back that is labeled "garage". Mr. Timko said that structure is basically a shed. Mr. Redgate said that the structure is conforming on the right side. Mr. Timko said that they tried to meet dimensional conformities everywhere that they could. He said that resulted in an unusually shaped house because it is an unusually shaped lot.

Mr. Levy read the Planning Board recommendation for the left side of the house, a side facing garage and a front porch in the setback area.

Mr. Levy said that, given the open space on the left side, he was not as concerned about the side facing garage. He said that on the right side, Mr. Timko should try to convince Michael Grant, Building Inspector, that the porch is entitled to an exemption or that the porch should be made conforming. Mr. Adams said that the porch would be nonconforming for the right side yard setback as well as the front setback.

Mr. Levy asked if any consideration was given to the 500 Foot Rule. He said that the Board would not be granting relief for that. He said that Mr. Grant will have to be satisfied that the house will comply with that.

Mr. Redgate said that the dimension for the garage at its closest point is shown at 20.2 feet. He asked about the dimension at the other end of the garage. Mr. Timko said that it will be over 35 feet.

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

Anna Danilenko, 21 Lawrence Road, said that she lives on the right side. She said that she was impressed with the design that appears to adhere to other homes in the neighborhood. She said that the setback on the right side for the existing structure is 20.3 feet. She said that the proposed porch will have a right side yard setback of 17.9 feet, which will be a tight squeeze. She said that she has a lot of windows on the left side of her house and they have children and chronic illness in the family. She asked if there are any plans for screening since the space will be even tighter than it already is.

Mr. Levy said that the Applicant there is no relief on the right side of the house that will be given. He said that the Board decide whether to grant a variance for a side facing garage that requires a 30 foot setback under the bylaw. He said that the Petitioner has done a commendable job on a small lot for meeting Zoning requirements. He discussed variance standards.

Mr. Timko said that the intent is to landscape and put screening in. He said that a driving factor of the design was that the properties are fairly close, and from that standpoint they decided to put the bedrooms on the other side, away from direct interface. He said that the large bay window is a staircase area. He said that

most of the spaces on that side are service functions such as a pantry or bathrooms. He said that they would be happy to work with the neighbor on screening.

Mr. Levy said that what is before the Board is consideration of a variance for a side entry garage. Mr. Adams said that the shape of the lot would meet the criteria for a variance. Mr. Levy said that the Board will not be granting relief for the front porch or the 500 Foot Rule.

Mr. Adams moved, Mr. Redgate seconded the motion, and the Board voted unanimously to grant a variance to allow for access to a garage to be less than 30 feet from the side property line 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 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. The Board grants no relief for the 500 Foot Rule or for the front porch.

ZBA 2021-82, DANIEL & LIVIA MADDEN, 24 DURANT ROAD

Present at the public hearing in behalf of the petition was David Himmelberger, Esq., representing Daniel and Livia Madden, the Petitioner. He said that there was a matter that was previously before the Board and received a special permit. He said that during the course of the summer, there was some water damage to the foundation. He said that giving further thought to it, the Petitioners considered razing and rebuilding exactly as is. He said that after the application was submitted, they got the cost estimates and decided that they would like to withdraw the petition without prejudice.

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

ZBA 2021-83, CYNTHIA SIBOLD, 130 ABBOTT ROAD

Present at the public hearing in behalf of the petition was David Himmelberger, Esq. and Kent Duckham, Architect.

Mr. Himmelberger said that the request is for a special permit to raze and reconstruct on the same footprint of a pre-existing nonconforming two car garage with a less than required side yard setback of 14.3 feet and a less than required rear yard setback of 13.5 feet. He said that the Petitioner also seeks to enlarge a fully conforming rear deck that is part of the same project.

Mr. Himmelberger said that the garage is proposed to be rebuilt in place with an increase in height of 3 feet to 21.5 feet. He said that the storage space will be accessed by stairs. He said that there is no heat or water proposed for the storage space.

Mr. Himmelberger said that the overall TLAG for the house and garage will increase by 204 square foot, for a total of 5,337 square feet, which is well within the allowable 5,900 square feet for the SR20 district.

Mr. Himmelberger said that the Petitioners spoke with their neighbors and they are supportive of the project.

Mr. Levy said that at a business meeting held earlier this evening, the Board discussed detached structures such as garages or storage sheds that proponents are seeking to replace or revise. He said that he spoke with Town Counsel about the issue and he drew attention to the Appeals Court case of Comstock v Gloucester, which was decided last year. He said that it did not come to a conclusion about whether a detached garage is a one or two family structure that is entitled to the benefit of second except clause of Section 6. He said that

in the Comstock case, the local bylaw permitted it. He said that Wellesley's local bylaw does not permit it as an accessory structure. He said that, according to Town Counsel, the better answer is that the accessory garage cannot be expanded or altered under Section 6 and Wellesley's local bylaw does not provide any additional protection, unlike the one discussed in Comstock. He said that the Appeals Court punted on the most recent case on point.

Mr. Levy said that as a result of its discussion at the business meeting, the Board recommend that the Planning Board look at the issue to decide whether it wants to give the Zoning Board the authority to permit one or two family houses to be reconstructed under a special permit finding. He said that Section 6 basically states that no structure may be expanded or rebuilt unless it conforms to the bylaw with the exception of one or two family houses. He said that the case is relatively new.

Mr. Himmelberger said that the Board has previously permitted reconstruction of garages in place if the footprint is not being expanded, which is the case here. He said that they can wait for the garage to fall down and then build it as a disaster rebuild. He said that a garage on Upson Road was expanded.

Mr. Levy said that this is a recent case that came to the Board's attention. He said that the Board raised it with Town Counsel because there was some concerns about it. He said that what was done in the past does not necessarily govern what the Board will do in the future. He said that in the Comstock case, the proposed garage will be on the same footprint as the existing one with a proposed roof that will be three feet taller, which is similar to the garage that is proposed in this application. He said that the Appeals Court, after discussing Section 6, said that they did not need to resolve the issue because the municipalities are free to adopt more forgiving rights. He said that he was not sure if this is a change in policy of this Board, as it had not come to a conclusion at the business meeting but the Board did conclude that it would ask the Planning Board to consider it as the policy making board.

Mr. Levy said that the garage is close to the lot line. He said that a taller structure, four feet from the lot line, is more imposing than having a taller structure in the middle of the lot. Mr. Himmelberger said that the garage is 14 feet from the lot line. He said that the majority of the garages in the neighborhood are not conforming in the back corner. He said that the neighbors are supportive.

Mr. Levy said that the Board received comments from neighbors who were not in support.

Mr. Adams said that the plans do not show the height of the proposed structure. Mr. Himmelberger said that on Plan A201 shows a ridge height of 21 feet 4 inches. He said that the existing is 18 feet. Mr. Adams said that some of the neighbors thought that it was a little much. He said that he did not hear an offer to move the garage further away from the side property line. Mr. Himmelberger said that there is a sub-issue with getting into the garage if it is moved in or forward.

Mr. Adams asked about grading. Mr. Duckham said that the grading has more to do with the porch, the deck and the terrace, and not the garage. He said that there is a large garage, probably equal distance from the lot line, immediately to the left. He said that the two garages will be side by side and in the same position off the lot lines. He said that there are tall fences on the property lines, so the space between the garage and the fence is unutilized space. He said that all of the properties there converge with fences in that back corner.

Mr. Redgate said that the proposed roof appears to have a double dormer, where the existing roof is standard. He said that the second floor is higher and has a lot more headroom. Mr. Duckham said that there is currently storage with ladder up to access it. He said that the proposed garage will have interior stairs.

Mr. Levy asked about proposed use of the space. Mr. Duckham said that it will be used for storage. He said that the existing garage is full and cannot be used. He said that there is some disrepair. He said that the homeowner would like to be able to put their cars in the garage, move the storage to the upper level, and

have it more readily accessible rather than going up and down the ladder. Mr. Himmelberger said that the height will go from 18 feet to 21.5 feet.

Mr. Adams said that with the roof system, the garage shows itself as a larger structure. Mr. Redgate said particularly with the second floor. Mr. Duckham said that they designed it to be more in concert with the existing house.

Mr. Levy said that Mr. Duckham discussed a similar garage on the left side. He said that it will actually be closer to the house behind, who will be impacted by a more imposing structure. Mr. Himmelberger said that there is a lot of screening there already. Mr. Duckham said that there are fences there.

Mr. Levy said that the Board received two letters from neighbors who asked that they not be shared at the public hearing. He said that the letters will be part of the file. He said that they have been submitted to the town, so they are public records.

Mr. Himmelberger said that he appeared before the Board for two recent cases on Cushing Road where garages were rebuilt. He said that the Board has had the ability to grant relief for that in the past. He said that the petitions on Cushing Road involved expanding the garages as well, unlike this one. Mr. Duckham said that the garage at 133 Abbott Road is being rebuilt. Mr. Levy said that his concern is the authority that the Board has under the statute. He said the Wellesley Zoning Bylaw only addresses one or two family dwellings and that Section 6 shall apply to all other structure. He said that Section 6 says that you cannot alter or rebuild a nonconforming structure without conforming to the bylaw. He read an excerpt from Section 6. He said that the intent is only to allow a finding to a single or two family structure. He said that the Comstock case bears that out. He read an excerpt from *Comstock v Board of Appeals of Gloucester*. He said that Town Counsel opined that accessory garages cannot be expanded under Section 6, and the Wellesley bylaw does not provide additional protections.

Mr. Adams said that he is moving more and more towards not being able to maintain the existing nonconformity. He said that if they want to enlarge it, even by making the second floor more usable by a few feet in height, for it to be not more detrimental, it has to reduce the nonconformity. He said that this is an area that is still being defined through cases after cases. He said that the proposal before the Board is not as onerous as some of the others that have come before it.

Mr. Redgate said that the Board does have discretion. He said that in some cases, architecture can mitigate the impacts. He said that there was a lot of effort put into the architecture and it is not just a big box that gets as big as it can on the footprint. He said that matching the house is a nice detail. He said that they did a good job in mitigating the increased impact with the details.

Mr. Levy said that he was reluctant to give the letters that the Board received full value since there were restrictions to the Board's ability to share them. Mr. Redgate said that the abutters know that they had the option to appear at the public hearing.

Mr. Levy discussed approval of a special permit in this case and not setting precedence. He said that the Board would like to have the Planning Board look at the issue because the Board would like to have the discretion as a service to the public, as well as to the neighbors, instead of having it black or white.

Mr. Levy read the Planning Board recommendation.

There were no members of the public who wished to speak to the petition.

Mr. Adams moved, Mr. Redgate seconded the motion, and the Board voted unanimously to grant a special permit for reconstruction of the accessory garage and make a finding that the proposed structure will not be

substantially more detrimental to the neighborhood than the existing nonconforming structure, subject to the condition that the height of the garage will not exceed 21.5 feet, as shown on the plans.

ZBA 2021-76, DANA CHAFFEE, 34 BROOK STREET

As there was no one present at the public hearing, Mr. Adams moved, Mr. Redgate seconded the motion, and the Board voted unanimously to allow the petition to be dismissed without prejudice.

ZBA 2021-79, ANDREW FAGENHOLZ, 26 CAVANAGH ROAD

As there was no one present at the public hearing, Mr. Adams moved, Mr. Redgate seconded the motion, and the Board voted unanimously to allow the petition to be dismissed without prejudice.

As there was no further business to come before the Board, the hearing was adjourned at 11:00 pm.

Respectfully submitted,

Lenore R. Mahoney
Executive Secretary

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