

**ZONING BOARD OF APPEALS**

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ROBERT W. LEVY  
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DEREK B. REDGATE

April 5, 2018  
7:30 pm  
Juliani Meeting Room  
Town Hall

Zoning Board of Appeals Members Present: J. Randolph Becker, Acting Chairman  
Robert W. Levy  
Walter B. Adams  
David G. Sheffield

**PUBLIC MEETING****ZBA 2018-25, NORTHLAND RESIDENTIAL, 135 GREAT PLAIN AVENUE**

Mr. Becker said that this is a Chapter 40B project and the Board is required to open a public hearing within a certain period of time. He said that the Board will open the hearing tonight and will immediately continue it. He said that no action will be taken on 135 Great Plain Avenue tonight. Mr. Adams moved and Mr. Sheffield seconded the motion to continue the public hearing to April 26, 2018. The Board voted unanimously to continue the hearing.

**ZBA 2017-81, JONATHAN MANTAK, 37 LONGMEADOW ROAD**

Mr. Becker said that the request from the Proponent is that the Board make a determination that the proposed change is a minor modification that does not require a public hearing. Mr. Adams said that the addition of plumbing on the second floor of the garage constitutes a major modification because this Board has traditionally excluded plumbing from rooms over detached garages. Mr. Sheffield said that has been the Board's practice and Mr. Becker said that he concurred in that. He said that the reason for that practice is because if plumbing is allowed in the garage it becomes human habitation, which would mean that there are two dwellings on a lot and that is not allowed under the Zoning Bylaw.

Mr. Sheffield moved and Mr. Adams seconded the motion to make a determination that the proposed change is a minor modification that does not require a public hearing. The Board voted unanimously to oppose the determination that the proposed change is a minor modification and does not require a public hearing, and the motion failed.

**ZBA 2018-09, DNH HOMES, LLC, 7 WILDON ROAD**

Mr. Becker said that the Proponent went to the Historical Commission and Planning Board and through negotiation, came to an agreement on façade changes in three of the views of the façade. Mr. Adams said

that there was also a minor floor plan change on the second level where there was a double window left of center and they would like that to be a single one now. He said that the window is highlighted but the modification is not shown. He described the proposed changes. Mr. Sheffield said that it looks better. Mr. Adams moved and Mr. Sheffield seconded the motion that the Board making a determination that the proposed changes are minor modifications that do not require a public hearing. The Board voted unanimously to make a determination that the proposed changes are minor modifications that do not require a public hearing.

ZBA 2017-93, PAUL & SIOBHAN DERRICKSON, 30 RIVERDALE ROAD

Mr. Becker said that the existing special permit permitted a deck, part of which was a hot tub. He said that the proposed minor modification is for extension of the deck. Paul Derrickson said that he and his wife own 30 Riverdale Road. Mr. Sheffield said that he recalled the original hearing. He said that there is remarkably little space around the hot tub. Mr. Derrickson said that the suggested improvement will add about six feet with no additional side yard encroachment. Mr. Adams confirmed that the neighbor's driveway is on that side of the property. Mr. Derrickson said that they provided a letter from the neighbor. Mr. Adams said that the proposed change does not increase the nonconformity or make the addition less suitable for the neighborhood. Mr. Sheffield moved and Mr. Adams seconded the motion that the Board making a determination that the proposed change is a minor modification that does not require a public hearing. The Board voted unanimously to make a determination that the proposed change is a minor modification that does not require a public hearing.

PUBLIC HEARING

ZBA 2018-14, MITCHELL & CYNTHIA CODDINGTON, 121 GROVE STREET

Presenting the case at the hearing were David Himmelberger, Esq. and Lisa Abeles, Architect, representing Mitchell and Cynthia Coddington, the Petitioner. Mr. Himmelberger said that the request is for a special permit to construct a second story addition to an existing one story portion of the house with conforming setbacks, as well as to expand pre-existing nonconforming garage due to insufficient side yard setback. He said that the house was built in 1921 on a 14,124 square foot lot in a 10,000 square foot Single Residence District. He said that the single car garage is located 4.8 feet from the right side property line. He said that the left side of the house is 18 feet from the property line. He said that there was previous Zoning relief granted in 1997 when the Board allowed a 10.5 foot by 6 foot shed addition to the rear of garage. He said that the proposed project is for a second floor addition over an existing one story at the rear of the home that is 20 by 25 feet. He said that the project seeks to widen the existing garage to the interior lot side of the garage by four feet to make it more functional. He said that it will remain one bay garage. He said that by widening it four feet, the pitch of the roof will change such that the new roof height will be 1.1 feet taller than the existing garage. He said that the shed at the rear will remain untouched. He said that they believe that this is an appropriate addition that is not substantially more detrimental to the neighborhood. He said that all of the addition to the house is conforming. He said that the rear of the house also has a front yard setback on Wildwood Circle. He said that they will be decreasing the setback by about 13 inches from 41.3 to 40.2, they will still be significantly further from Wildwood Circle than the abutting homes. He said that 19 Wildwood has a 27.3 foot front yard setback, 16 Wildwood has a 33.3 foot front yard setback, and 12 Wildwood has a 28.5 foot front yard setback. He said that most recently the Board granted a variance for setback relief at 125 Grove Street, which is the house to the left. He said that the current peak height of the house is 29.5 feet and the new addition will be 9 inches shorter. He said that the garage height will increase to 14.5 feet. He said that the current Total Living Area plus Garage (TLAG) of 3,967 square feet will increase 668 to 4,635 square feet. He said that they believe that it meets the criteria for a special permit/finding –

Ms. Abeles said that they will keep three faces of the garage. She said that they will move the left side of the garage out four feet so that it is easier to open a door when you pull into the garage. She said that they will keep the same shape of the roof. She said that they have improved how it looks from the front by making the detailing more consistent with the house. She said that there is a one story addition at the back of the main house that looks less consistent with the house. She said that they will add a second story to that and that will make it look like it has always been there. She said that it will look more natural with the same gambrel roof instead of the flat roof. She said that the chimney has an odd relationship to the flat roof. She said that a structural engineer determined that the existing foundations are good, so they can build on top of that. She said that you cannot see the addition from the street. She said that it will look better for the people on Wildwood Circle. She said that they will do some minor modifications to the stairs as you enter the house and the back door of the mudroom.

Mr. Adams said that he did not see the second story clearly marked on the plot plan. Mr. Levy said that it is difficult to see the changes on the plot plan. He said that he could not see the difference between existing and proposed conditions. Ms. Abeles said that they will be building over what is existing. She said that the garage will be getting bigger. Mr. Levy asked if there will be a second story in the garage. Ms. Abeles said that there will not be a second story. She said that the change is to allow enough room to open up the car doors.

Mr. Adams said that the property is located in a 10,000 square foot Residential Zone. He said that the building currently exceeds the TLAG threshold and they will be increasing that further. Ms. Abeles said that they wanted to make the house look consistent and not impact the neighborhood more. She said that the house will look better and probably will not be seen from Grove Street. She said that she intentionally kept the ridge below the existing ridge at the front of the house and it is set back on both sides. She said that the existing one story is not in keeping with the house. She said that it will look more natural with the proposed addition.

Mr. Levy said that it is 25 percent over TLAG for the district. Mr. Adams said that it is a 14,000 square foot lot in a 10,000 square foot district. Mr. Becker said that everything will be behind the house and will not be seen. He said that even though there will be a 40 percent increase in TLAG, it is located on a 14,000 square foot lot and you would not see the impact as if it were on a 10,000 square foot lot. He said that the house starts at 3,900 square feet and would not meet the TLAG threshold no matter what. Mr. Himmelberger said that it will be a 17 percent increase over what is there now. Mr. Levy said that the footprint will not change significantly. He said that landscaping will not be impacted. Ms. Abeles said that they will not remove any plantings to do this. Mr. Levy asked if any exterior lighting is proposed. Ms. Abeles said that there is already a light at the back door and there is no additional exterior lighting proposed.

Mr. Adams said that they will be adding more impervious surface. He asked about drainage. Mr. Himmelberger said that it will be a very small amount of additional square footage. He said that they will be building over an existing structure. He said that new structure will be the garage piece and the eaves. He said that they were not planning any additional drainage because they thought that the increase was diminimis. Mr. Adams asked about gutters. Ms. Abeles said that gutters will drain to the ground and away from the house into the large backyard.

Mr. Levy asked if the Petitioner had looked at the Demo Bylaw. Mr. Himmelberger said that every addition for which a building permit is sought is now reviewed by either the Building Department or the Planning Department to determine if the addition covers or envelopes more than 50 percent of the structure. He said that they have done a calculation and will cover 13 percent. He said that no demo review will be required.

Mr. Becker read the Planning Board recommendation.

Mr. Becker asked if there was anyone present at the public hearing who wished to speak to the petition.

Mr. Levy moved and Mr. Adams seconded the motion that the Board find that the proposed modification shall not substantially more detrimental than the existing nonconforming structure and approve a special permit. The Board voted unanimously to grant a special permit.

ZBA 2018-15, HARVEY RASMUSSEN, 79 DONIZETTI STREET

Presenting the case at the hearing were Paul Worthington, who said that he was the designer of the project. Also present were Marc Charney, and John Lochwood. Mr. Worthington said that the proposal is for construction of an addition at the rear, to expand into an existing front porch and build over an existing first floor space. He said that they are looking to reframe the roof to create a usable third floor with two bedrooms and a bathroom.

Mr. Levy asked what the request is for. Mr. Worthington said that the request is for a special permit/finding to continue a nonconformity. He said that they will not encroach any more. He said that they will maintain what is there and carry it back.

Mr. Levy said that the nonconformities are an undersized lot at 6,489 square foot lot and the front yard and right and left side yard setbacks are nonconforming. He said that the proposed addition at the rear will conform to rear yard setbacks and existing side setbacks. Mr. Worthington said that they will continue the line of the house on the driveway side. Mr. Levy said that there are two air conditioning condensers in the setback, which is also nonconforming. He said that under the bylaw, all air conditioning equipment has to be within the setback. Mr. Adams said that they may be able to put them in the rear so that they are not in the setback. Mr. Levy said that the Petitioner will need some relief from the Board. Mr. Becker said that the bylaw prohibits units in the setback. He said that it was not advertised as part of the special permit. He said that because there is a specific bylaw requirement, it needs to be a variance, not a special permit. He said that the Board can issue a special permit with a condition that the air conditioners be moved to a conforming location or there can be a variance for the units at the location shown on the plot plan. He said that the Board cannot do that tonight because it was not advertised. He said that it is shown on Sheet 1.

Mr. Levy asked about Total Living Area plus Garage (TLAG). Mr. Worthington said that 2,965 square feet is the new total.

Mr. Adams asked if the plans were shared with the neighbors. Mr. Charney said that they were and the responses were favorable. He said that one of the neighbors was present at the public hearing.

Mr. Becker read the Planning Board recommendation.

Mr. Adams said that he was cognizant of the challenges of enlarging a home on a small lot. He said that it is a case by case basis depending on how the design is carried out, and to some degree the opinions of the people who live nearby if they care to share their opinion with the Board.

Mr. Becker asked if there was anyone present at the public hearing who wished to speak to the petition.

Elizabeth Murillo, 77 Donizetti Street, said that she supports the plans for the house, which is on a small lot, more livable for families. She said that is the direction that the neighborhood is going. She said that she enjoys being close to her neighbors. She said that the design does not detrimentally impact the overall scheme of Donizetti Street. She said that there are very small lots for the first several houses and then they get deeper. She said that it is a challenge to work on the undersized lots. She said that the house in

its current state is not at a standard where you would have livable, practical space. She said that the designs represent a trend where you want to encourage families to utilize the neighborhood which is in proximity to the schools. She said that this would not be a substantially more detrimental modification to what is existing there. She said that whatever happens to the home will require modifications. She said that the plans, as presented, have been done thoughtfully and she supports them.

Patrice Simonelli, said that her parents are abutters on the opposite side at 81 Donizetti Street. She said that her parents did not get a copy of the proposed plans until they got the card from the town. She said that it was not shared. She said that she did not think it was fair that, because it will be an improvement to what the house will look like, that a behemoth is allowed to become part of the neighborhood. She said that the house is already over and above what it should be in terms of the lot size. She said that if it goes up, it affects sunrooms, lights and sunlight from abutters. She said that what is proposed is a little ambitious and not suitable for the lot. She said that the pictures are deceiving. She said that they do not show the side that her parents live on where it is extremely close to the driveway. She questioned how this will be accomplished without encroaching on anybody else's property. Mr. Levy said that it appears that her parents' driveway abuts the property line. Mr. Adams asked if the intention is to remove the fence. Mr. Charney said that they were not planning to but are happy to discuss it. Ms. Simonelli said that the fence is the least of what is objectionable. She said that the Rasmussens owned the house before her parents moved in. She said that the fence had already been there. She said that they continued to keep it, just to be neighborly.

Mr. Levy asked if this will be a spec project. Mr. Charney said that it is a spec project.

Mr. Worthington said that a lot of the TLAG is the third floor. He said that there is no garage. He said that the total increase to the footprint is 240 square feet over what is currently existing.

Mr. Adams said that the property is located in a 10,000 square foot district and that would allow for 3,600 square feet. He said that this will be under that threshold.

Mr. Becker said that the Board has to make a determination whether it thinks that this will be more detrimental to the neighborhood because of the size and mass and that goes back to the size of the lot. He said that this is a large house on a small lot.

Mr. Adams said that Ms. Murillo expressed an opinion that he believes personally. He said that people with small lots have to be encouraged to be able to improve their homes. He said that in many cases, small houses on small lots are starter homes. He said that oftentimes it is not easy to jump from a starter home to a larger home and you have to make modifications to the starter home. He said that you have to do it in a way that will not encroach on a neighbor's peace and enjoyment.

Mr. Levy said that they will almost be doubling the size of the house. Mr. Worthington said that most of it is on the third floor. He said that they will take what is there and reframe the roof. He said that right now it is a hip roof with no room on the third floor. He said that by changing to a gable and a little cross gable, they will have a nice design and a usable third floor. He said that a 3,000 square foot home is not really a behemoth. Mr. Charney said that home will be in the middle zone where it is more affordable and has some of the amenities that people are looking for if they have children.

Mr. Adams asked about the bedroom that will face the neighbor on the 81 Donizetti side. Mr. Worthington said that is bedroom 4. Mr. Adams asked about dropping the roof three to four feet on that side. Mr. Worthington said that it is already kind of a low knee wall. Mr. Adams you would not be able to walk up to that wall. He said that they may have over-calculated the TLAG.

Mr. Adams moved and Mr. Levy seconded the motion that the Board make a finding that the proposed construction shall not be substantially more detrimental than the existing nonconforming structure and approve a special permit, subject to a condition that the approval does not include the ac condensers, as shown on the plan. The Board voted unanimously to grant a special permit.

#### ZBA 2018-16, ACT DEVELOPMENT, 9 FRAMAR ROAD

Presenting the case at the hearing were Laith Tashman, Co-Owner, Act Development, and Sami Kassis, P.E.. Mr. Tashman said that the proposal is for a two story 600 square foot addition to the rear of the house. He said that existing Total Living Area of 1,450 square feet will increase to 2,050 square feet. He said that the addition will be tucked behind the existing garage that currently extends further to the rear than the main house. He said that the proposed addition will extend the main portion of the home 13 feet but will not be as deep as the existing garage. He said that they will not change the front elevation. He said that the addition will comply with setback requirements. He said that the lot is nonconforming, as is the case with some neighboring lots. He said that the addition is reasonable in size and is in harmony with the general intent of regulations and will not be out of character. He said that he hoped that it will be a great addition for everyone. He said that it is a win/win situation.

Mr. Adams said that the Board received a number of statements from abutters who were quite concerned about this proposal. He said that it is relatively modest but in his opinion as an architect, the addition is not very compatible with the building and is not consistent with the types of buildings that are in the neighborhood. He said that it is a very plain, utilitarian addition that shows no details and has large areas of blank walls that will loom over the neighbors below. He said that it will not encroach on any setbacks but it is his opinion that the character of the addition could be more in harmony with the existing building or the entire building could be modified to a different style. He said that the proposed addition has a large blank wall and a very shallow roof that is not very compelling. He said that the door that is shown on the elevation drawing does not seem to go anywhere. Mr. Kassis said that the garage floor is higher than the basement. He said that it is in between the two floors. Mr. Becker said that it looks from the plan that there is a concrete slab that goes through two windows and under a door. He asked why the concrete slab is shown. He said that it is not clear how it works because from the proposed back elevation, it looks like someone walking out the door would fall down to the dotted line at the bottom of the windows. Mr. Kassis said that the ground comes almost to the door, which is about seven inches above grade.

Mr. Becker asked about the height of the proposed addition. He said that the property falls off as you go back, so the further back you go, the higher the building will be. He said that in Wellesley the height is defined as the average grade around the building. Mr. Kassis said that the land goes straight and falls after the addition. He said that there is a patio where the addition will be. Mr. Tashman said that the peak will be 25.6 feet, according to the surveyor.

Mr. Becker said that the seal on the plans was signed by a structural engineer, not an architect. He said that the project looks like it was designed by a structural engineer. He said that while the Planning Board's review talked about the addition not being visible from the street, he thought that they meant Framar Road because the addition is visible two locations on Seaver Street. He said that because of the blank walls and the boxiness of the design, it will loom over Seaver Street, notwithstanding the trees that are there. He said that the Planning Board talked about potential screening but given the elevation difference, he did not see how they would be able to screen it. Mr. Kassis said that there are evergreen trees at the back. He said that you cannot see the house on the left. Mr. Becker said that you can clearly see 9 Framar Road from two locations on Seaver Street, despite the trees. Mr. Adams said that the house will come 13 feet closer. He said that the Board cannot legislate how they want the house to look but it can offer judgments about whether a house is designed in a way that minimizes its bulk and size and adds by adding details to do that. He said that this design did not take advantage of any of those tricks of the trade. He said that he does not object to the proposed size of the addition but he suggested that the

Petitioner consider bringing a designer onto the team to make the design more compatible with the neighborhood, even though there is no requirement for that. He said that the Board got letters from neighbors expressing concern about the looming of the house, partially due to the topography, and the proposed structure dominating over their homes.

Mr. Becker asked if there was anyone present at the public hearing who wished to speak to the petition.

David Burgess and Elaine Metcalf, 22 Seaver Street. Ms. Metcalf said that they are the neighbors directly below. She said that their property abuts 9 Framar Road. She said that they are the ones on whom this project has the most potential impact. She said that they tried to familiarize themselves with the bylaws. She said that they did not hear about the letter of recommendation from the Planning Board until this morning, so they did not have the opportunity to send any letters to the Planning Board. She said that they are aware that the proposed addition does not add any new nonconforming features, does not exacerbate the nonconforming structures or the land, but they believe there are special circumstances that apply that are in conflict with the spirit of the bylaws. She said that their main concern was the topography. She said that there is a difference in elevation of approximately 10 feet from the back of 9 Framar to the back of her house. She said that there is a difference in elevation from the back of 9 Framar Road to the front of the house of approximately five feet, which results in their first floor being the same as the Metcalfs second floor. She said that having the addition come 13 feet closer to the property line will have a fairly imposing impact on their and the house next door, which will also result in a lack of privacy in the backyard and the house itself. She said that it will increase the direct line of sight between 9 Framar Road in the back and the Metcalf's living and eating areas. She said that they are concerned about the natural lighting. She said although the existing height will not change and it is within the ordinance, the relative height change due to the topography will cause them to lose a lot of natural light. She said that this is an area where water drainage has been difficult. She said that since moving in, they have taken steps to correct this. She said that they are concerned that they may get more flooding as a result of this proposed construction. She said that the Planning Board raised a question about visibility. She said that it will not be visible from the front of the house, visibility from Framar Road will be increased with the removal of a tree and from their house and Seaver Street. She said that three immediate abutters will be the most influenced by this. She said that along with themselves, the neighbors at 18 Seaver Street and 11 Framar Road are opposed and have submitted letters. She said that they share the view that the addition is not aesthetically pleasing. She said that they were concerned about the lack of architectural details, including the windows and siding. She said that she spoke with the developer on one occasion and was told that they would be removing one mature tree from the front corner of the house. She said that she asked about the evergreen trees at the rear but the developer did not know the answer to that and has not gotten back to her about it. She said that from the trunk to the back of the addition would be approximately 10 to 15 feet. She said that all branches on that side will have to be removed for clearance or the trees will have to be removed completely, which will dramatically reduce or remove any screening. She said that the developer told her that no new landscaping was planned. She said that there is a retaining wall on their side of the fence due to the topography and they do not think that they could plant anything substantial enough to provide screening from their side of the property line. She said that they could not build a fence high enough to change the line of sight. She said that they will be the most affected but they are also aware of their neighbors' opinions. She said that they drew on a map of the town who is opposed to this petition. She said that she had seven additional letters from neighbors who are opposed to this plan. Mr. Levy said that the Board received four letters. Ms. Metcalf said that there should be a total of eight letters, including theirs.

Mr. Burgess submitted four pages of photographs that were taken by his neighbor, Richard Page. He said that if you were to draw a straight line from 9 Framar Road to 22 Seaver Street, it comes out to the bottom of the second floor windows. He said that the bottom of those windows is two to three feet from the floor, which gives you an idea of how much higher the house already is. He said that he measured 13 feet out from the corner to show where the addition will go. He said that the grade gets steeper at the corner. He

said that standing where the addition will be and looking down onto his property, it will overlook their kitchen and dining room and will afford them no privacy. He discussed photographs that were taken from Seaver Street that give you an idea of how much higher the house at 9 Framar Road already is. He said that coming 13 feet closer will loom over their property. He said that the view from Seaver Street is not screened by the trees. He said that it is quite visible. He said that if the roof is extended 13 feet towards their property, it will dramatically impact the morning light. He said that even though these houses may be distances appropriately if the land was level, the change in grade makes one loom over the other and 9 Framar Road would be right on top of them.

Mr. Levy said that the Planning Board makes its recommendations based on the submittals but the Zoning Board does make site visits in preparation for the hearings.

Mr. Adams asked about the horizontal distance from the back side of the home at 22 Seaver Street to the fence. Mr. Burgess said that his guess is that it is about 25 feet.

Mr. Tashman submitted a letter with an attached map of the surrounding neighbors showing Total Living Area (TLA) of lots with less than 10,000 square feet. He said that four lots are less than 10,000 square feet. He said that one house has less than 2,000 square feet of TLA but all of the rest of the neighboring houses have at least 2,000 square feet. He said that this is the smallest and the only exception. He said that he is just asking to add 600 square feet to make it consistent with the neighborhood in terms of size.

Mr. Adams said that it is a small lot. He said that he had not heard any concern that the addition will be too large square footage wise. He said that the concern has been more about how it is formed together and the impact. Mr. Tashman said that they are happy to work with the Board to make it less impactful.

Mr. Becker discussed continuing the petition to give the Petitioner time to address concerns. Mr. Levy asked if Mr. Tashman plans to tweak or redesign the plans. Mr. Tashman said that they are willing to resolve certain concerns of the Board and the neighbors. He said that the existing kitchen is too small and they want to expand it and add a room upstairs. He said that they would like to make this a three bedroom home.

Mr. Levy said that the Board's charge and the legal standard is for the Board to make a determination, since this is a nonconforming lot, that the proposed renovation will be no more detrimental to the neighborhood. He said that although the decision is up to the Board, it looks like all of the contiguous abutters and abutters to abutters have strong feelings that this is more detrimental.

Mr. Becker said that when he looked at the statistics for the neighborhood, he included Framar Road and Seaver Street from 2 through 26. He said that he did not include anything on Peck Avenue because that is in a 15,000 square foot district, so it is not a good comparison. He said that 9 Framar Road is the smallest lot in that neighborhood and the only one that comes close is 22 Seaver Street at 8,700 square feet. He said that the average living area in that neighborhood is just over 2,700 square feet, so this TLA is less than the average that exists in the neighborhood. He said that the square footage is not overwhelming the neighborhood. He said that because of the topography, the blank walls loom over the rest of the neighborhood. He said that if the Petitioner is willing to look at those things and come back with a revised design, the Board should continue the hearing to allow him time to do that. Mr. Adams said that he agreed. He said that if there was a way to configure it so that the second floor does not extend out as far as it does, it might be less impactful. He said that there may be nothing that they can do to get the space that they want.

Mr. Levy said that the Board has four options, it can vote it up or down, it can continue the hearing or allow the petition to be withdrawn without prejudice. Mr. Tashman asked that the petition be continued.

Mr. Becker said that revised materials should be submitted a week before the continued hearing. Mr. Levy encourage the Petitioner to speak to the abutters and show them the plans.

Jan Wright, 21 Seaver Street, submitted a letter to the Board. She said that she previously lived at 22 Seaver Street. She said that she is very familiar with this house and the looming of it. She said that she was concerned with the deck. She said that being on the patio at 22 Seaver Street and having a deck up above would be uncomfortable. She asked if there was something that Mr. Tashman can do with his redesign to make the deck a little less imposing because there will be no privacy if someone was on the deck and someone was in the yard at 22 Seaver Street.

Mr. Levy moved and Mr. Adams seconded the motion to continue the hearing to May 3, 2018. The Board voted unanimously to continue the hearing.

#### ZBA 2018-17, NIELS BOEGHOLM, 2 PLEASANT STREET

Presenting the case at the hearing were Kip Schultz, representing Niels Boegholm, the Petitioner. He said that Mr. Boegholm has owned an 1,800 square foot house at 2 Pleasant Street since 2004. He said that the house was built in 1917. He said that it sits on a 5,578 square foot lot. He said that the request is for a special permit for a pre-existing nonconforming structure with nonconforming setbacks. He said that there is a 5 by 13 foot first floor structure that they would like to building on top of at the back. He said that the current stairs that lead into the house at the front has the step as the landing. He said that there is no landing. He said that they currently have an active permit for interior renovations and as part of that they have to bring the house up to Code. He said that they have to reinforce the floor and add insulation to the front entryway, which is forcing them to raise the door four inches. He said that they are now required to rebuild the front landing and they have to build it to Code. He said that they will need a variance to do that because they cannot meet the setbacks. Mr. Becker said that the 24 square foot landing would be by right. The Executive Secretary said that the landing will be less than 25 feet to the street line. Mr. Schultz said that there is 13 feet from the front of the house to the street line. He said that they are proposing to have it be 9.1 feet with the landing. He said that the project was advertised as a variance and a special permit. Mr. Levy said that there are two different legal standards for a variance and a special permit. Mr. Adams asked if it will be a covered landing. Mr. Schultz said that it will be.

Mr. Adams said that there is a provision under the Building Code that if there is a conflict between requiring the Building Code for safety and egress, that can overrule the Zoning Bylaw. He said that causes the building official to have to make a determination that they could not solve the Building Code nonconformities some other way. He said that could be used to allow that stair.

Mr. Becker said that the Planning Board recommended that the Board approve the special permit, as requested. He said that it does not say anything about the variance.

Mr. Becker said that this is a small addition and there is no impact to anything around it. He asked the Executive Secretary why this needs to be a variance. Ms. Mahoney said that the fifty square feet that is discussed in Section XIX of the Zoning Bylaw. She said that to meet the exception for front yard setbacks, the front entry cannot exceed fifty square feet, project more than five feet from the face of the building and cannot come closer than 25 feet to the street line. Mr. Becker said that the definition for front yard setbacks does not have any requirements to it. He said that if the proposed entry was greater than 50 square feet, the front yard depth would be 9.1 feet, not 13 feet. He said that because it is 24 square feet, which is less than 50 square feet, the side yard is measured to the front of the building. He said that the definition does not say that you cannot have something in that space, it simply tells you where to determine what the front yard depth is before you determine whether it complies with the bylaw or not. He said that in this case, we know that it does not comply with the bylaw because the building is 13 feet away. He said that he would interpret it that because this is 24 square feet, it is less than the 50

square feet that is allowed in the front yard setback. He said that, therefore, 13 feet is the front yard setback. He said that clearly does not comply with the bylaw, which the Board knew was one of the nonconformities. He said that to his way of thinking the proposed entry, in terms of Zoning action, is a non-issue.

Mr. Adams read an excerpt from Section XIX of the Zoning Bylaw. He said that the front yard is measured from the street line to the building extending across the entire front of the lot. Mr. Becker said that it further discusses excepts, including an entrance porch on the first floor which neither exceeds a total area of 50 square feet nor projects more than five feet from the face of the building nor extends nearer than 25 feet to the street line. Mr. Becker said that if your front wall is 100 feet from the property line and you have 100 square feet that is a 10 by 10 landing, your front yard is not 100 feet, it is 90 feet. He said that for ZBA 2018-15, the porch was already defining the front yard. Mr. Adams said that he agreed with Mr. Becker's assessment. He said that he did not think that it is a variance. He said that one could make an argument that this property is suitable for a variance.

Mr. Becker asked Mr. Schultz if he had a piece of paper from Michael Grant saying that he needed a variance to do this. Mr. Schultz said that he met with Michael Grant and Ms. Mahoney and that was their determination.

Catherine Johnson, Planning Board, said that this is an issue that has come up many times before. She said that is something that they will be looking at as part of their work plan. She said that the Planning Board did not see the legal notice that requested a variance, so they only looked at this as a special permit/finding.

Mr. Levy said that the Board could grant a special permit and let Mr. Grant deny it and have it return to the Board, unless he is satisfied that the Board granted a special permit. Mr. Adams said that it is an existing nonconformity. Mr. Levy said that the Board has always interpreted the bylaw to not exacerbate nonconformities in a special permit context. He said that it what this is doing. He said that the front steps are going more into the setback than the existing. Mr. Adams said that is driven by the Building Code.

Mr. Levy asked about having a side entry.

Mr. Becker said that if the assertion is that it needs a variance because it is an exacerbation of an existing nonconformity, he can understand that. Mr. Levy said that the Board still may not treat this as a special permit for that reason unless it's considered to not be a Zoning violation. Mr. Becker said that you could still treat this as a special permit because the definition of front yard exempts a landing that is less than 50 square feet. He said that this is not projecting more into the 13 feet, therefore it is not an increase in the nonconformity, therefore it does not need a variance. He said that he found it hard to believe that they would need a variance for a 24 square foot landing.

Mr. Adams said that there would be some disadvantages to switching the stair to the side. Mr. Boegholm said that it is supposed to be the main entrance to the house. Mr. Adams said that there are some houses that do that. Mr. Becker said that this is a corner lot, so there are two front yards, neither of which complies. Mr. Adams said that there may be three front yards unless Mr. Grant decides that Leary Road does not constitute a front yard setback.

Mr. Levy said that he had not heard any evidence to support a variance. Mr. Adams said that he was more than happy to treat this as a special permit. He said that if Mr. Grant feels that he cannot issue a permit, the Petitioner will have to come back before the Board. Mr. Levy said that the Board has at times allowed diminimis construction.

Mr. Becker asked if there was anyone present at the public hearing who wished to speak to the petition.

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

ZBA 2018-18, DAVID & MYEONG COLETTA, 39 ATWOOD STREET

Presenting the case at the hearing were Doug Stefanov, Architect, and David Coletta, the Petitioner. Mr. Stefanov said that Mr. Coletta and his family recently purchased the property. He said that the building is a little small for them and they would like to put on an addition.

Mr. Stefanov said that there was a ruling in 2003 where a deck was built without a permit and the Board ruled that the deck was not detrimental to the neighborhood. He said that the lot lines are not parallel to the building lines. He said that it makes the setbacks as the lots go back. He said that the lot is 50 feet wide, which with current setbacks would give you a 10 foot swath of building. He said that he was working with the existing setbacks to the deck at the back to stagger the addition at the back of the house to provide more living space. He said that it is a sloped site that goes back to a river. He said that this is outside of the 200 foot buffer. He said that the front of the house will remain unchanged. He said that they might do some trim remodeling. He said that the porch will be left alone. He said that the addition will be at the back of the house towards the garages and well back behind the neighbors at 37 and 41 Atwood Street.

Mr. Stefanov said that the building is a concrete block exterior, as is 37 Atwood. He said that lot coverage will increase from 23.3 to 25 percent.

Mr. Stefanov said that there is an existing garage building that code would have it to be 10 feet away from the addition. He said that they wanted to integrate a connection, or breezeway from the garage to the main house to make it one structure.

Mr. Adams said that he is an Architect. He said that he has not worked directly with Mr. Stefanov but he does know him and they do converse from time to time. He said that he can fairly and impartially communicate his opinions about this matter. He said that he would recuse himself if there was anyone who had any objections.

Mr. Levy said that the Zoning Analysis shows that it is a 20,000 square foot district and the lot is 11,705 square feet. He said that is a mistake. Mr. Adams said that the analysis states that the height limitation is 45 feet but it should be 36 feet.

Mr. Adams said that he walked around the building. He questioned whether the proposed structure will be close to 40 feet in height from average grade. He said that it appears that with the proposed increase in height it will exceed 35 feet. Mr. Stefanov asked about lowering the roofline. Mr. Adams said that it does not appear to be any purpose for the attic other than storage. He said that lowering the height of the addition to the height of the existing structure would address a concern.

Mr. Becker said that his concerns arose out of the Planning Analysis. He said that when he looked at the size of things the numbers did not look so bad but how they are applied in the real world. He said that the numbers do not look back because there is a lot of land behind the house that changes the numbers. He said that this house fitting in the neighborhood is different from what the numbers show. He said that the numbers are distorted by the land at the back.

Mr. Levy said that there is a lot of massing at the rear.

Mr. Becker asked about Total Living Area plus Garage (TLAG) calculations. Mr. Stefanov said that it will be 3,551 square feet. Mr. Becker said that would make this house the largest in the neighborhood. Mr. Stefanov said that the calculations includes garage and attic space.

Mr. Becker read the Planning Board recommendation. Mr. Stefanov asked what would be considered not more detrimental. He said that it is a fairly good sized lot in length. Mr. Becker said that the houses in this neighborhood are small and close together. He said that expanding this house as much as it is being expanded, in comparison to the other houses, is what makes it substantially more detrimental to the neighborhood.

Mr. Levy asked if the homeowners have talked to any of the neighbors. Mr. Coletta said that they had. He said that he spoke with the neighbor on the left last week and explained that the plan is to expand over the existing deck.

Mr. Adams said that there are two good sized garages. He asked if they will only be used for residential purposes. Mr. Stefanov said that there is only one single garage for this property. He said that the other garage belongs to the neighbor. He said that they share a driveway.

Mr. Adams asked if they will be replacing the existing shed with new construction. Mr. Stefanov said that new construction will partially replace the shed. He said that the existing plastic shed will come out.

Mr. Adams asked if the connection from the garage to the house will be above grade. He said that you would not be able to walk from the driveway through. He said that part of the problem with that is that it dramatically increases the perceived size of the building from the street. He said that it reads as a single building. He said that with the shared driveway and the other garage it will be all be perceived as a one large structure. Mr. Stefanov asked if it would be permissible to have the garage closer than 10 feet to the addition. He said that he thought that there was a Zoning separation requirement. Catherine Johnson, Planning Board, said that is not a requirement in the Zoning Bylaw. She said that there was an issue with a property on Wellesley Avenue where a pre-existing garage was less than 10 feet and might have required something that was noted by the Building Inspector for Fire rating of walls and separation of buildings. She said that it is Fire and Building Code. Mr. Stefanov said that the breezeway can disappear if the space is not required.

Mr. Becker asked if there was anyone present at the public hearing who wished to speak to the petition.

Mr. Adams said that it is a difficult lot. He said that it appears that the intention is to keep the existing house the way it is. Mr. Stefanov said that they will do interior work to the existing house. Mr. Adams said that lowering the roof and getting rid of the enclosed breezeway would require revised plans that the Board would have to see in order to approve it.

Mr. Becker said that the Planning Board said that the proposed structure will be too big. Mr. Stefanov said that bringing the roof down will reduce the TLAG by 315 square feet. Mr. Adams said that TLAG would be 3,236 square feet. Mr. Becker said that it would still be the largest or close to the largest house in the neighborhood. Mr. Adams said that the way that the land slopes from the back and from the street along the sides, it presents as a very large structure. Mr. Stefanov asked if the addition of a small deck off the back would help. Mr. Levy said that they are bumping up close to the 200 foot buffer.

Mr. Becker said that if the Board is okay with the size, it should go ahead with a special permit that is subject to a condition that addresses bringing down the roof height. Mr. Levy said that the Board should see plans for that. He said that the proposed structure looks like two architectural styles. He said that the addition looks like an appendage. Mr. Stefanov said that it is sort of a quasi-mansard roof. Mr. Levy said

that the Board does not focus on design but this addition looks like an orphan. Mr. Adams asked if the roof line could be lowered to the same peak elevation as the existing house. Mr. Stefanov said that they can do something with a similar pitch, but staggered.

Mr. Becker discussed continuing the hearing so that the Petitioner has time to do some things and the Board and the public have time to look at revised plans and provide comments. Mr. Stefanov said that is agreeable. Mr. Adams encouraged the Petitioner to speak to the neighbors on both sides, at a minimum.

Mr. Levy moved and Mr. Adams seconded the motion to continue the hearing to May 3, 2018. The Board voted unanimously to continue the hearing.

#### ZBA 2081-19, VICTORIA FAZEN/DIPIETRO, 10 BRYN MAWR ROAD

Presenting the case at the hearing were Preston Picardi, Contractor, and Dan DiPietro, homeowner. Mr. Picardi said that the request is for a special permit/finding to construct a two-story two car garage that will be 28.5 by 31 feet. He said that the existing structure is pre-existing nonconforming in the front and right side yard. He said that 3 feet by 24.5 of the front of garage will not increase the encroachment that is 27.1 feet. He said that they will reduce the encroachment of the front porch from 18.8 feet to 20.6 feet, but increase the length of it to 20 feet for curb appeal. He said that they will also construct a back deck that will not increase the existing encroachment. He said that total lot coverage will be under 25 percent.

Mr. Becker asked about the Total Living Area plus Garage (TLAG). Mr. Picardi said that the existing is 2,655 square feet and the proposed addition will be 2,979 square feet, for a total of 5,634 square feet. He said that it will be an increase of 112 percent. He said that 1,200 square feet of it will be attic and 350 square feet will be basement. He said that the total living space is currently just over 2,000 square feet and will be 3,240 square feet.

Mr. Adams asked what the attic space will be used for. Mr. Picardi said that it will be for storage. He said that there is a pull down ladder. He said that there will not be a full staircase. He said that he may add another pull down ladder in the master bedroom but they will have to see how it lays out. Mr. Adams asked about the height to the underside of the ridge in the attic. He asked if the full square footage was accounted for in the attic.

Mr. Adams said that the Planning Board suggested that the Petition should consider pushing the addition back. He said that he disagreed with the Planning Board. He said that this is a good example of a well designed addition that compliments the style of the existing building and maintains similar setbacks of projecting elements. He said that the design minimizes the bulk and size of the building. He said that they could have done this elsewhere on the lot. He said that this property is the combination of two lots and is twice the size of most of the lots in the neighborhood. He said that the proposed design is a suitable way to put the addition on. Mr. Picardi said that they started with a plan to stay conforming he and his clients did not like the look of the house at all.

Mr. Levy asked about the tree that is in the proposed driveway. Mr. Picardi said that the plan is to keep the tree. He said that they designed the driveway around it. Mr. Levy asked if the trunk is outside of the driveway. Mr. Picardi said that they will have to fine tune where the driveway will sit but they think that they can get it in there without disturbing the tree. He said that they are aware that there is a whole other process if they do remove the tree. He said that his clients really like the tree.

Mr. Becker asked if the 20.6 feet is measured from the lot line to the front of porch or to the wall. Mr. Picardi said that it is measured to the front of the porch. He said that it used to be 18.8 feet. He said that they will reduce an eight foot porch to six feet. He said that they will increase the length to make the porch and the roof more proportional to the rest of the house. Mr. Becker said that the front yard would

be measured to the porch not to the building wall. He said that because the 20.6 is nonconforming, it was nonconforming before as well, so it is not an increase in the nonconformity. He said that his understanding of the Planning Board's analysis is not that they wanted the garage to be moved back to make it more conforming in a dimensional sense but rather to give a difference in planes so that you did not have one wall staring at you when you looked at it from Bryn Mawr.

Mr. Becker said that he struggled with the size as well. He said that whole zone including the neighborhoods on either side are all significantly smaller lots than the Board is used to seeing. He said that there are only four lots on Bryn Mawr that conform. He said that most of the lots are in the range of 5,000 to 6,000 square feet, so they are half what the zone requires. He said that when you do a large house it is not necessarily like the rest of the neighborhood, not because there is anything wrong with the design of the house but because it is a giant among midgets. Mr. Picardi said that it is not the biggest house on the street. He said that there are four to five other houses that are significantly larger. Mr. Becker said that because of the changes in the TLAG in the most recent version of the bylaw, it is hard for the Board to refer back to the Assessor's data, which is what it would normally do. He said that the Assessor's data suggests that the living area is currently just over 2,000 square feet. He said that, even accounting for differences in definition, it is still a significant increase. Mr. Adams said that this lot has a gorgeous side yard.

Mr. Becker read the Planning Board recommendation.

Mr. Becker asked about runoff due to the increase in footprint. Mr. Picardi said that they will have gutters that will run into the yard. Mr. Becker said that the property is located in a Water Supply Protection District where the preferred solution is to put it back to groundwater. Mr. Picardi said that there have not been any problems in the past but they can look into putting in a drywell and divert the gutters to it.

Mr. Adams asked about exterior lighting. Mr. Picardi said that there may be a spotlight for the driveway, some sconces by the front porch and something at the back. He said that there will be nothing in the side yard. Mr. Adams asked if recessed lighting was considered instead of the sconces so that you would not see the light. Mr. Picardi said that they usually do put in recessed LED lights. He said that the sconces come in if the client wants that look or not. He said that has not been narrowed down yet.

Mr. Adams said that he is not struggling with the size of the house. Mr. Levy said that it is a lot of house for this neighborhood. Mr. Adams said that they have the space to do it in two stories as opposed to going up to three. Mr. Becker said that one of the mitigating measures is the location of the existing house on the lot. He said that there is space on the left side that mitigates the distance to the neighbors.

Mr. Levy asked about a height calculation. Mr. Picardi said that it is 27.5 feet and they will keep it at that.

Mr. Adams moved and Mr. Becker seconded the motion that the Board make a finding that the proposed structure shall not be substantially more detrimental than the existing structure and approve a special permit, subject to conditions that any increase in runoff from additional roof and impervious surfaces go into drywells, and that best effort are made to maintain the existing tree. The Board voted unanimously to grant a special permit.

#### ZBA 2018-20, FR LINDEN SQUARE INC., 180 LINDEN STREET

Presenting the case at the hearing was Brian Levey, Esq., representing CVS, Inc. He said that the request is for renewal of a drive through special permit. He said that he has been to the site to inspect the drive-through and has spoken with Store Manager and the District Manager and they report no issues with

pedestrian or vehicular traffic in and around the area of the drive-through. He said that they are requesting a two year extension.

Mr. Levy moved and Mr. Becker seconded the motion to grant renewal of a special permit, subject to the same conditions. The Board voted unanimously to renew the special permit.

ZBA 2018-21, SIP PARTNERS 984 WORCESTER ROAD LLC

Presenting the case at the hearing was Brian Levey, Esq., representing CVS, Inc. He said that the request is for renewal of a drive through special permit. He said that he has been to the site to inspect the drive-through and has spoken with Store Manager and the District Manager and they report no issues with pedestrian or vehicular traffic in and around the area of the drive-through. He said that they are requesting a two year extension.

Mr. Levy disclosed that he represents the owners of the abutting property at 978 Worcester Street and since they have no objection to the petition, he did not see a conflict.

Mr. Levy moved and Mr. Adams seconded the motion to renew the special permit, subject to the same conditions. The Board voted unanimously to grant renewal of the special permit.

ZBA 2018-22, JOHN KENDALL & MELISSA ARRONTE, 35 CLIFFORD STREET

Mr. Adams said that he is a colleague of Erin Reilly, Architect, who he sees occasionally at Metrowest Architect Group. He said that he thought that he could fairly and impartially offer his opinion and guidance to this case.

Presenting the case at the hearing were Erin Reilly, Architect and John Kendall, the Petitioner.

Ms. Reilly submitted Total Living Area plus Garage (TLAG) and demo calculations and a previously granted decision. She said that that is it an existing nonconforming house. She said that the proposed work involves re-working the second floor within the existing framework and reconfiguring the roof to add space in the attic. She said that the project simplifies complicated rooflines. She said that an addition at the back part of the house was done in 2005 that created a lot of rooflines. She said that the proposed new roof will be a simple gable with two shed dormers. She said that the design will solve a construction maintenance nightmare. She said that existing dormers will be taken off. She said that there is a house close by on the right side facing from the street. She said that there is a line of trees there. She said that the roof slopes back with a low pitch. She said that there is a 57 foot side yard on the other side. She said that the houses on either side are both full two story structures with finished attics, which is what they are proposing here. She said that they will not be going into a new footprint. She said that the existing footprint is 19.7 feet from the side property line. She said that the existing second story is 29.2 feet at the front. She said that they are asking for a small amount of relief. She said that it will not add much physical mass or bulk.

Mr. Adams said that the rendering shows how the owner and the Architect have improved the façade of the building tremendously in a way that does not detract and does not appear to raise the eave line.

Mr. Becker confirmed that the 19.71 dimension on the plot is the side yard setback. Ms. Reilly said that the addition will not change the footprint. She said that they are going straight up and adding the attic level. She said that the existing nonconformity is 0.3 feet into the side yard setback. She said that they will not be making that any bigger. She said that is the case for the front as well. Mr. Becker confirmed that 23.17 is to the first floor and 29.79 is to the addition above. Ms. Reilly said that the 23 is to an enclosed front porch.

Ms. Reilly said that the house was built in 1865. Mr. Adams asked about demo calculations. Ms. Reilly said that it will be 19 percent. She said that the increase in TLAG will be 16 percent, for a total of 3,300 square feet.

Mr. Adams said that it is refreshing to see people who still sketch their drawings.

Mr. Becker read the Planning Board recommendation.

Mr. Adams said that they will not be increasing the impervious surface, so drainage is not really an issue.

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

#### ZBA 2018-23, TD BANK, 999 WORCESTER STREET

Presenting the case at the hearing were John Scribner, Lisciotti Development, and Austin Turner, Polar Engineering. Mr. Scribner said that Lisciotti Development is planning to buy the property at 999 Worcester Street. He said that the property straddles residential and business districts. He said that the existing building is approximately 6,200 square feet, of which 2,900 square feet is occupied by TD Bank and the remaining space Sherwin Williams is looking to lease.

Mr. Scribner said that relief was granted in 1998 that allowed for parking in the residential district. He said that decision had a condition that said that prior to a change in ownership a new petition needed to be submitted requesting the extension of the existing variance. He said that Lisciotti Development is requesting that the Board grant that extension and eliminate the change of ownership condition. He said that the intent of the condition was for a change of use. He said that somehow change of ownership got added to the decision. He said that the decision references 40 parking spaces. He said that they just completed a survey and identified 39 parking spaces. He said that it appears that some improvements were made at some point and they added handicapped accessible spaces along the right side. He said that the number of spaces was reduced by one but none of the parking in the residential district was affected. He said that number remains at 17. He said that the request is to amend the prior decision to reflect what is current.

Mr. Becker said that he researched the history of the property since 1947. He said that different numbers of parking spaces are discussed. He said that he did not see anything in any of the decisions specifying the number of parking spaces. He said that the number of parking spaces depends on the business use and that is fundamentally proportional to the building. He said that as long as they do not change building, then nothing changes. Mr. Scribner said that in the Statement of Facts in the 1998 decision states that the total number of spaces is accordance with the Zoning Bylaw requirement of 40 spaces. Mr. Turner said that the number of spaces needed for a bank use with a retail component is 41. He said that the site has historically been operating as a bank and retail with various tenants. He said that it appears that at some point in the not too distant past someone made improvements for accessibility by putting handicapped spaces close to the entrances. He said that the site is still appropriately served by parking. He said that improvement for the sake of accessibility at the cost of one parking space seems reasonable. Mr. Adams said that it is very reasonable. He said that many parking lots were created without any accessible spaces but the State's access regulations now require that parking areas for 15 or more spaces to be retro-fitted.

Mr. Becker said that the Petitioner has asked to continue the variance that allows the use of the residential portion of the property to be used for parking, to amend the conditions to do away with at the change of ownership, and the number of parking spaces. He said that this is a long running case of a bad decision at

the beginning that through time has ignored other available solutions exacerbated by the Zoning Bylaw changing fundamental requirements. He said that prior to 1976 when the State changed its Chapter 40A rules to control variances better, the town amended its bylaw to change the basis for variances. He said that prior to that time, any difference between what somebody wanted to do and the Zoning Bylaw was called a variance. He said that it would not be a variance under today's bylaw. He said that currently under the bylaw there is a special permit or a variance and there are very specific conditions required for a variance.

Mr. Levy said that overlaid on that are the two different types of variances, use and dimensional. He said that Wellesley does not recognize use variances under its current bylaw. Mr. Becker said that the town used to recognize use variances but it no longer does. He said that one could argue that the 1998 decision is null and void because the Board did not have the power to do what it did.

Mr. Becker said that under residential special permits, off-street parking can be permitted as a non-accessory use. He said that the most common application of that in town is in church parking lots who rent out spaces in their parking lots to uses that are not related to the church. He said that Lisciotti Development could make an agreement with itself that as the residential portion you would have a non-accessory use agreement with the business portion to park cars there. He said that the owner would have to come in once a year to get a special permit. He said that the real solution is to go to the Planning Board to get the residential portion re-zoned as business at Town Meeting.

Catherine Johnson, Planning Board, said that Town Meeting just approved re-zoning a property at 170 to 184 Worcester Street. She said that it had a residential property to the back of it that they wished to use for parking. She said that the Planning Board proposed at Town Meeting that the property be re-zoned as Single Family A, which allows any single family use and accessory parking. She said that this could very easily be done. She said that it will have to go through Site Plan Review to configure the parking and landscaping. She said that the Planning Board recommended that going forward with this property that it go through the process to re-zone it. Mr. Becker said that granting a special permit for non-accessory parking would give the owner a year to work on re-zoning the property.

Mr. Becker said that he did not think that the Board can amend the basic original variance because it does not have the power to grant a use variance. Mr. Levy said that Chapter 40A, Section 10, does have a provision relative to use easements that were properly granted prior to January 1, 1976 but limited in time. He said that it may be extended on the same terms and conditions that are in effect. Mr. Becker said that the Board can extend the variance but it cannot change its terms. Mr. Levy said that he was not sure that the restriction was proper at the time. He said that he is more concerned about a variance granting 39 spaces because that would require an entire analysis having to do with the topography, the shape or soil conditions of the lot. Mr. Scribner said that they can adjust the number of parking spaces. Mr. Levy said that if they Town Meeting they can probably resolve all of the issues with the assistance of the Planning Board.

Mr. Levy asked about the size of the existing spaces. Mr. Turner said that they are typically 9 by 18. Mr. Levy said that it is a bit of an eclectic lot where no one really knows where the property lines are.

Ms. Johnson said that the reasonable Town Meeting action would be to re-zone the property as Single Family A and then go for Site Plan Review. Mr. Levy asked about re-zoning it to business. Ms. Johnson said that it makes it more conforming for the abutting properties where the business districts flow in a straight latitudinal line across the back of where they are now. She said that everything behind it is single family district.

Mr. Turner said that it sounds like there is a provision that allows the Board to extend with the change of ownership, provided that nothing else changes. He said that when they reviewed the minutes on this

property there was clearly an item that talks about a future change of use. He said that it looks like that got translated to owner/use in the ultimate condition. He said that there was no discussion about owner in the minutes. He said that the spirit and intent of that condition was to address a change in a type of business and different impacts. Mr. Becker said that the owner will have to live with it until he gets the re-zoning. Mr. Levy said that the Board can extend the variance and over the next year the owner should work with the Planning Board to resolve the issue by re-zoning the property.

Mr. Levy said that the number of required parking spaces is based on the use. Mr. Tuner said that the bank and retail unit was there in 1998. He said that the decision references 40 parking spaces. He said that they can put it back to that number to be consistent with the decision. He said that the ownership provision stays because, given the change in the law, it is not something that allows the Board the empowerment to modify that. He said that the request would be that the Board grant the extension of this approval without modifying the provision concerning ownership. Mr. Levy said that the Board will probably add a recommendation that the owner work with the Planning Board to attempt to re-zone. He said that it would not be a requirement. He said that Dunkin Donuts had a similar situation where they acquired land from the State. He said that every time they came before the Board to renew their drive-through special permit, the Board encouraged them to try to buy the land.

Mr. Scribner said that Mr. Levy mentioned that Chapter 40A allows a length of time for the extension. Mr. Levy said that the Statute says that it may be extended on the same terms. Mr. Becker said that the term was applicable to the original decision. He said that in 1998 the Zoning Board said something to the effect that the time that you owned it was the term, therefore there was a time and therefore it can be extended, hence the ownership provision. He said that the solution to the problem is to get it re-zoned. Ms. Johnson said that it is an easy process. She said that it is something that the Planning Board would want to do.

Mr. Adams said that they can probably give up one of the parking spaces and still comply with ADA. Mr. Turner said that they have four and they only need two. He said that they can figure it out.

Mr. Levy confirmed that Lisciotti Development does not own the property yet. He questioned whether this is ripe for the Board to decide. He asked about the anticipated closing date. He said that TD Bank was the applicant and is the current owner. Mr. Scribner said that the decision says that the potential owners need to come before the Board prior to a change of ownership. He said that Lisciotti submitted the application but a representative from TD Bank signed it. Mr. Scribner said that the Wellesley Retail, LLC is the entity that will purchase the property. – extend to –

Mr. Levy moved and Mr. Adams seconded the motion to extend the variance to allow the transfer of the property to Wellesley Retail, LLC under the same conditions as the existing permit. He said that that the Board recommends that the Applicant work with the Planning Board to seek a re-zoning of the residential portion of the premises. The Board voted unanimously to grant extension of the variance to allow the transfer of the property to Wellesley Retail, LLC.

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

Respectfully submitted,

Lenore Mahoney  
Executive Secretary