

**ZONING BOARD OF APPEALS**

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

RICHARD L. SEEGEL, CHAIRMAN
J. RANDOLPH BECKER, VICE CHAIRMAN
DAVID G. SHEFFIELD

LENORE R. MAHONEY
EXECUTIVE SECRETARY
TELEPHONE
(781) 431-1019 EXT. 2208

ROBERT W. LEVY
WALTER B. ADAMS
DEREK B. REDGATE

February 1, 2018

Juliani Meeting Room
Town Hall

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

PUBLIC MEETING**ZBA 2018-07, WELLESLEY COLLEGE, 106 CENTRAL STREET – GLOBAL FLORA GREENHOUSE**

Mr. Becker said that the purpose of tonight's public meeting is to discuss the conditions that were put together after the public hearing was closed for Site Plan Approvals and Special Permits for major construction projects in a Water Supply Protection District (WSPD).

Mr. Becker said that the Board received feedback from Wellesley College that they have no comments on the conditions.

Mr. Levy said that the Design Review Board (DRB) and Planning Board recommendations were received after the hearing and will not be part of the record.

Mr. Becker said that Wellesley College will be back in the fall for the renovation of the Science Center and that will include the same area as the Global Flora Greenhouse and the L & E Wing renovations. Mr. Levy said that the Global Flora Greenhouse and L & E Wing projects are still in front of the Wetlands Protection Committee.

Mr. Sheffield said that he had no comments on the conditions. He said that the questions raised to by the Department of Public Works (DPW) have been responded to with appropriate answers.

Mr. Levy moved Mr. Sheffield seconded the motion to approve Site Plan Approval for the Global Flora Greenhouse, ZBA 2018-07, as drafted. The Board voted unanimously to approve Site Plan Approval.

Mr. Levy moved Mr. Sheffield seconded the motion to approve Site Plan Approval for the L & E Wing, Science Center, renovations, ZBA 2018-08, as drafted. The Board voted unanimously to approve Site Plan Approval.

Mr. Sheffield moved and Mr. Levy seconded the motion to approve a Special Permit for a major construction project, ZBA 2018-07, Global Flora Greenhouse, in a Water Supply Protection District. The Board voted unanimously to approve a Special Permit.

Mr. Sheffield moved and Mr. Levy seconded the motion to approve a Special Permit for a major construction project, ZBA 2018-08, L & E Wing, Science Center, in a Water Supply Protection District. The Board voted unanimously to approve a Special Permit.

PUBLIC HEARING

ZBA 2018-05, TIMOTHY HO & KRISTIN JACQUES, 42 RIVER RIDGE

Presenting the cast at the hearing were Timothy Ho and Kristin Jacques, the Petitioner. Mr. Ho said that the request is for a special permit to build a modest addition onto the main structure at 42 River Ridge. He said that the existing lot size is nonconforming at 6,000 square feet where a minimum of 10,000 square feet is required. He said that frontage is 50 feet where 60 feet is required and the north and south side yard setbacks are 8.9 feet and 8 feet. He said that they have done their best with the proposed addition to not intensify existing nonconformities. He said that they will maintain the north side yard setback at 8.9 feet. He said that the addition will not affect the south side yard setback. He said that proposed lot coverage will be conforming. He said that removal of the garage will eliminate an encroachment issue where a corner of the garage crosses over onto 38 River Ridge.

Mr. Ho said that they sought approval of the project from almost all of their neighbors, some of whom are in attendance at the public hearing. He said that three neighbors who were unable to attend the public hearing submitted letters of support.

Mr. Ho said that the existing garage is an eyesore and is keeping his family from using their backyard in a meaningful way. He said that they tried their best to make the proposed addition not more nonconforming. He said that the addition will not be visible from the street. He said that he and his wife have a seven month old son and they hope to have several more children. He said that they hope to make this their forever home, not just a starter home.

Mr. Sheffield confirmed that the Petitioner had seen the memo from the Department of Public Works (DPW) about the driveway that is not appropriately constructed in accordance with the Town's regulations.

Mr. Sheffield said that the proposed air conditioning condensers are in the side yard setback, which is not in accordance with the Zoning Bylaw (ZBL). Mr. Ho said that his neighbor at 38 River Ridge also asked him about that. He said that he was not sure if they will fit behind the house where they would not bother anyone. Mr. Becker said that the submittal did not contain information about the air conditioning units. Mr. Ho said that originally the plan was to have air conditioning units but due to costs the plans were changed to remove them. He said that the land surveyor put them back in.

Mr. Becker said that the increase in total living area (TLA) is approximately 2.4 times. He asked what will happen to runoff from the new facilities. He said that the property is not located in a Water Supply Protection District but because of the lot shape and location, it is important to understand what will happen to that water. Mr. Ho said that currently all of the runoff goes forward and empties into the front yard where there is a drainage system. He said that they will have to come up with a reasonable plan for where the water will go. Mr. Seegel said that a civil engineer will have to come up with a drainage plan.

Mr. Becker said that an increase in TLA at a factor of 2.4 times is not out of the box with respect to other projects that the Board has seen but the siting of this building on the lot is different from most. He said that he was struggling with the impact of that on the neighborhood. Mr. Sheffield said that this is a difficult situation with the 50 foot width of the lot. He said that with 20 foot setbacks on each side, there would be approximately 10 feet possible for the house in the center. He said that the property abuts Commonwealth of MA property on the east side. He said that it looks beyond Route 128 where there is a long range view of Boston. He said that the Petitioner had not taken advantage of that with the design of the house. Mr. Ho said that the conservation land behind the house has foliage coverage that obliterates that view. He said that all that you see is the river and the highway. He said that the way that the house sits, the trees are high enough so that they cannot see anything

Mr. Sheffield said that it looks like there is a possibility of taking six feet off of the rear of the house at all three levels and still have the bathroom and master bedroom with a larger backyard.

Mr. Seegel said that the Engineering Division at DPW talked about the parking issue. He said that probably 30 to 40 percent of the houses on River Ridge have the same situation and park on town land. He said that he was less concerned about that than the size of the addition. He questioned whether there was something more that they could do with the existing house plus an addition of a different size. He said that the neighbor at 46 River Ridge is objecting to this. He said that he understands the constraints of the lot. He said that he agrees with Mr. Sheffield's comments.

Mr. Sheffield restated his concerns to Jacob Lilley, who is the Architect working with the Petitioner. Mr. Sheffield said that he was concerned that there will be no rear yard. He said that, in looking at the plans, he thought that they would still be able to get closet space, a sufficient master bedroom and two bathrooms at the upper floor. He said that they might orient the house with more access to the outdoors to the east and then have more of a back yard. He said that they could create more outdoor space by reducing the interior space by six to eight feet on each level.

Mr. Lilley said that a challenge is the tight lot and the addition appearing to be out of scale. He said that the rooms on the first and second floor are modest compared to today's standards. He said that there is very little fluff or fat. He said that the lot is constrained, so there was not much that they could do. He said that the goal was to do an addition that is sensitive, modest and meets the client's needs. He said that the scale of the addition is appropriate to the existing house. He said that they took cues from the existing house in designing the addition. He said that it will not be a big house by today's standards. Mr. Seegel said that it will be a lot of house for a small lot.

Mr. Seegel said that the proposed HVAC units cannot go where they are shown on the plan in the setback. He said that the units will have to be relocated to the rear of the house, not in setback. He said that may affect the size of the house.

Mr. Seegel said that the neighbor is objecting to this petition for a number of reasons. He asked if the Petitioner had any conversations with the next door neighbors. Mr. Ho said that they did speak to them early in the process. He said that they explained that they were interested in building an addition to the house. He said that the existing garage used to be on shared driveway that is no longer shared. He said that because of the size of the garage and the size of the backyard, they do not use their backyard. He said that is it noisy and loud from the highway and they find it unpleasant to be back there, which is why they are trying to maximize utility of the home by taking up that space for the interior of the house. He said that they did not show the neighbors the final plans. He said that the neighbors were objecting from the start, no matter what the plans were.

Mr. Seegel asked how the Petitioner proposes to resolve the parking issue. Mr. Ho said that they are happy to fix that situation in accordance with town regulations. Mr. Seegel said that the Board cannot

approve the plan as it is shown tonight. He said that the Board will need to see a parking plan that shows no encroachment on town land. He said that the air conditioning condensers will have to be moved. Mr. Sheffield said that a semi-circular driveway may not be possible there.

Mr. Sheffield said that the plot plan shows a distance from the back of the house to the rear lot line of 11.9 feet. He said that a condenser may not fit there. Mr. Ho said that they can remove them from the plan. He said that was their original plan.

Mr. Ho said that they only have one car and they usually park parallel to the road. Mr. Becker said that it is a question of the facilities. He said that right now the arrangement is a semi-circular driveway, a significant portion of which is on town land.

Sheldon Oppenheim, 38 River Ridge, said that his house is on the northern side of this house. He said that the east side of River Ridge was set up and divided up long before the Zoning Bylaw came into effect. He said that over the years the Board has been considerate in dealing with these situations of history.

Mr. Oppenheim said that his concern with the condensers was noise. He said that he is already working with Mr. Ho on that issue. He said that he has looked at the plans and has no objection. He displayed views from his house looking down onto the property. He said that the Board is usually concerned about obstructed views or if there is something objectionable. He said that the proposed addition cannot be seen from the street. He said that his would be the biggest view. He said that he does not have a tall fence. He said that right now his view is of a crummy old garage that is just an eyesore. He said that he could not imagine any addition looking any worse. He said that it already looks bad. He said that the garage encroaches on his property. He said that he would like to see this project happen because the view will get better. He said that there is no view of Boston. He said that the best view is from his second story window of Route 95 to see if there is a traffic jam. He said that he supports this project because he needs the view to change.

Mr. Oppenheim said that the backyards are not particularly usable. He said that he has lived on the street for 12 years. He said that he has and he supports this.

Myriam Spiegel, 46 River Ridge, said that present with her at the public hearing are Brian Levey, Esq. and her husband, Ben Spiegel. She said that she and her husband are primary abutters to 42 River Ridge. She said that, along with other neighbors, her family is opposed to the extension, especially when it will require a special permit for the property boundary setbacks. She said that the proposed structure will impact their daily lives and will be extremely detrimental to the neighborhood. She said that the petition is an attempt to alter the lot at the neighbors' expense.

Ms. Spiegel said that when Mr. Ho and Ms. Jacques first moved in, they introduced themselves as a neonatal doctor and a pediatric nurse at Children's Hospital. Ms. Jacques said that it was their first home. She said that at some point their landscaper was measuring Ms. Spiegel's fence because they were planning to plant bushes along the fence. She said that she saw Walter Adams at the back of 42 River Ridge gesturing a house extension to Mr. Ho. She said that instead of a nice landscape they might be getting a wall now. She said that nonconforming house rights have been created to protect properties that could not exist under current law. She said that the Board can grant a special permit if it is shown that it will not be substantially more detrimental to the neighborhood. She said that in no way is the essence of the law intended for nonconforming homes to push to the edge of the development envelope so that the home no longer fits in the neighborhood. She displayed photographs. She said that there will be six windows plus two basement windows facing her home. She said that she will be able to see the basement windows because they will be so close to the property line. She said that plus a bay window is too much. She said that it is well beyond reasonable. She said that they also want to add a porch. She said that there

will be 25 windows plus one porch. She said that there are no more than 15 windows in the existing house. She said that the existing porch is way too close to her home.

Ms. Spiegel displayed a picture of the view from her first floor. She said that the plan is to create a wall eight feet from her property line. She said that Mr. Ho's house is as large as the practicality of the land can take. She said that the frontage is under 50 feet and each side is within 8.9 feet of the side abutters. She said that currently there is a small backyard but the proposed extension takes that away.

Ms. Spiegel said that DPW said that the existing driveway does not meet regulations and barely accommodates two cars but only one legally. She said that a new driveway up to Code will take more of the front yard.

Ms. Spiegel displayed a Google picture that shows the street crowded. She said that she chose a Google picture because it is random.

Ms. Spiegel said that the project includes an expanded basement with big windows. She said that Mr. Ho may ask in the future for bedrooms, bathrooms and a kitchen for two-family occupancy. She said that Mr. Ho's land cannot accommodate more people. She said that more people mean more cars and more trouble for the Spiegels. She said that they and 41 River Ridge have frontage that is disrupted by driveways.

Ms. Spiegel said that every time that Mr. Ho watered his lawn, water would come over to her yard. She said that after Mr. Spiegel spoke to Mr. Ho about this, Mr. Ho approached Ms. Spiegel to apologize. He told her then that he did not know what to do with his shed, she went to his backyard and tried to have him ideas. She said that he then spoke about extending and started gesturing the exact same extension that Mr. Adams gestured to him before. She said that Mr. Ho said that he wanted to extend to have his in-laws live with him. She said that she told him that was excessive and that she objected to such a large addition.

Ms. Spiegel said that when she asked Mr. Ho later if he planned to go ahead with the extension, he denied it. She said that she asked him to remove the part of his illegal fence and retaining wall from her property. She said that he told her that he would get a quotation and have it removed. She said that a few months passed and nothing happened. She said that they sent him a formal letter giving him 30 days to execute the removal. She said that the illegal retaining wall and fence are not included in Mr. Ho's surveyor's plan.

Ms. Spiegel said that owners such as Mr. Ho want to push the law as much as they can. She said that when they ask for special permits they do not leave any space for sheds, lawns or parking but instead build bigger to the detriment of the neighborhood. She urged the Board to stop this extension. She said that because they have no more land, cars park in the street, children play in the street and sheds are pushed into the protected State Forest, including the shed of Walter Adams of the Zoning Board of Appeals. Mr. Seegel questioned Ms. Spiegel if she was suggesting any illegal action by Mr. Adams. Ms. Spiegel said that she was. Mr. Seegel said that his suggestion is that Ms. Spiegel not make any innuendoes about Mr. Adams. Ms. Spiegel said that her suggestion was to say that those people who get extensions don't include driveways and sheds, and then they expand. Mr. Seegel said that the Board is discussing the property at 42 River Ridge.

Ms. Spiegel said that she wanted to discuss the ZBA petition at 28 River Ridge. Mr. Seegel said that a decision from another property is irrelevant. He said that every property stands on its own. He said that every property is unique.

Ms. Spiegel said that this is her home. She said that parking, neighbors disputes, sheds on neighbor's land and protected State Forest, children playing on the street because the houses are taking over the lawn

playground, and narrow spaces between houses creating a potential disaster is madness that has to stop. She said that it does not make sense to have another house on that side of River Ridge to get bigger to the detriment of the neighborhood. She said that the decision that the Board makes today will shape the neighborhood not only for the people who live there now but for many generations to come. She said that the Board has the choice to leave a practical legacy for the benefit of the neighborhood.

Brian Levey, Esq., said that he had read the Planning Board recommendations and they seem to be in line with these comments. Mr. Seegel said that the Zoning Board is not bound by the Planning Board recommendations. Mr. Levey said that in addition to the Planning Board's recommendation for denial, there is his client's opposition as the abutter to the south of the property and a letter from the owner at 41 River Ridge, which is the abutter directly across the street. He said that two of the key neighbors are opposed to the project. Mr. Seegel said that the Board also received several letters of support.

Mr. Levey said that they provided materials to the Board that show the increased infringements into the setbacks on the north and south sides of the property by 55 percent. He said that there will be an increase in the length of the house from 41 to 58 feet. Mr. Seegel said that it will not be a solid wall. He said that there will be indentation. Mr. Levey said that they provided a GIS map of the west side of River Ridge that shows that his client's house is forward of most of the other houses. He said that the extension of the house at 46 River Ridge into the rear will have a more powerful impact than normal on the abutter. Mr. Seegel said that Ms. Spiegel does not have a right to a view. Mr. Levey said that he was talking about impact on the neighborhood. He said that his clients' engineer, Norwood Engineering, has estimated a 54 percent increase in the living area of the house. He said that is a very large increase.

Mr. Levey said that he needed to make a correction to the memorandum that he sent to the Board. He said that they had stated in the application that approval of the addition would make this home the fifth largest in terms of living area. He said that was a mistake because they omitted 10 Cedar Street. He said that it would be the sixth largest home in terms of living area. He said that four of the five houses with more living area are on much larger lots. He said that only exception is 36 River Ridge where the Board granted a variance and warned that it should not be viewed as setting a precedent.

Mr. Levey requested that the Board deny the application.

Marcia Stein Adams, 36 River Ridge, said that it is difficult to follow such an explosion of venom and rage. She said that her neighborhood believes that what makes for a good neighborhood is good neighbors. She said that the Board has made many accommodations to the neighbors so they can continue to live in their homes and raise their families and contribute to this community. She said that they could not ask for a better neighbor than Mr. Ho and Ms. Jacques, who have never been anything but gracious, helpful and participating in the community spirit of neighborhood. She said that they have difficult lots. She said that in speaking for herself and her family, they are in total support. She said that they would like to have them stay in the neighborhood. She said that they would like to have families who cannot afford the double lots and mega mansions to be able to contribute to the diversity and the richness of this community. She said that, in order to do so, the Board has to make as best an accommodation to allow their families to grow. She said that this is a hardship for but one.

Elizabeth Ciappenelli, 39 River Ridge, said that her husband was unable to attend the hearing tonight but they have seen the plans and think it is attractive, well thought out and will fit in with the character of the neighborhood. She said that it will not be more detrimental to the neighborhood. She said that her property is diagonally across the street.

Olimpiu Dejeu, 28 River Ridge, said that he supports what Mr. Ho and Ms. Jacques want to do. He said that they have growing family and they need it. –

Florence Sheikh, 34 River Ridge, said that she has lived there for the past 37 years. She said that it is a unique neighborhood that is priceless because of the nature of the people who share their lives together there. She said that they have been fortunate to have Mr. Ho and Ms. Jacques come to join the neighborhood. She said that their plans are well thought out and she is in total support of their project.

Fred Klingmeyer, 32 River Ridge, said that he and his wife are very supportive of Mr. Ho and Ms. Jacques. He said that 35 years ago the Board was generous in that it gave all kinds of variances so they could stay on River Ridge. He said that you cannot put a price to the friendship of the families. He thanked the Board of its consideration.

Mr. Sheffield said that he went on to the town's website to look at the Assessors site. He said that there is an anomaly on the Spiegel property. He said that the assessment of the home is in one place and in another place on the same page that is approximately four times different. He said that they have the house assessed at over three million dollars.

Mr. Seegel said that the Board will need to get a new plot plan. Mr. Sheffield and Mr. Becker said that they would prefer to see a new plot plan before taking a vote. Mr. Becker said that what happens to the water is an important issue as well.

Mr. Sheffield said that there are three issues, the compressors, the driveway and the runoff.

Mr. Seegel discussed continuing the hearing to March 1, 2018. He said that a revised plot plan should be submitted to the Board at least a week or 10 days before the hearing that shows the air conditioning units either moved or removed, a change to the driveway and parking so that it does not infringe on River Ridge, and a drainage plan that may consist of drywells.

Mr. Sheffield said that the plot plan shows a sidewalk that goes to the side of the house. Mr. Ho said that it goes to the hose and faucet. Mr. Sheffield asked if there was any intention to connect that to the entry stairs. Mr. Ho said that there was not but they can consider it. Mr. Lilley said that is a pre-existing path. Mr. Sheffield suggesting creating a walkway that connects to it.

Mr. Ho submitted a letter from the abutter at 45 River Ridge in support of the project. He submitted photographs of the view from 46 River Ridge and photographs of the views to the left and to the right of their house.

Mr. Ho said that this is the story of two different neighborhoods. He said that on one side you see a six foot high fence, an unwelcoming sign and a number of video cameras and a state of paranoia looking out onto the street. He said that on the other side you see an open and welcoming community that they love and would rather not move away from.

Mr. Sheffield moved and Mr. Becker seconded the motion to continue the hearing to March 1, 2018. The Board voted unanimously to continue the hearing.

ZBA 2018-04, SUE FUN LEE & RONALD KO, 1 CRESCENT STREET

Presenting the case at the hearing was David Himmelberger, Esq., who said that the Board is familiar with this special permit that is up for renewal. He said that a special permit was previously granted in 1956 and reviewed annually until 1961 when it was put on a five year track. He said that the Board added another condition in 1977 that the special permit would continue in perpetuity so long as the Petitioner, Mr. Nuzzi, or one of his family members owned the property. He said that the permit continued until 2010, at which point he was retained by the then owner who wished to sell the property. He said that the Board granted a modification of the condition that required a member of the Nuzzi family to own or

occupy the property. He said that the condition was modified to state that so long as the owner of the property or a member of the Nuzzi family lived there, the special permit would continue, subject to a one year review. He said the property was then sold to his clients and they have resided there ever since. He said that Sue Fun Lee and her husband, Ronald Ko, were originally from China and are now U.S. citizens. He said that English is their second language.

Mr. Himmelberger said that when the application came up for review in 2012, the broker who participated in the sale made an application to the Board and the Board granted a continuing special permit subject to a two-year window. He said that the State's Special Permit Extension Act extended the permit, so this is the first time that the petition has been back to the Board since 2012, at which point his clients were represented by the broker.

Mr. Himmelberger said that when the decisions issued over the past four or five times, including 2010 and 2012, the decisions stated that the permit is renewed and conditions 1 to 3 of the 1977 permit are continued and condition 4 is modified. He said that his clients purchased the property in 2011 and began a series of renovations to the house. He said that there are two other units and they have made some great improvements. He said that when his clients bought the house, they were told by the broker that, as for the third floor which was in derelict state when they bought the house, that the third floor could not be occupied for sleeping. He said that the house has 24 rooms with six rooms on the third floor. He said that in 1956 when the permit first issued, the petitioner asked for four apartments with a fourth unit on the third floor where there was a kitchen and a bath. The Board said no because there was only one single means of egress and it was not practical to add an egress. He said that the applicant got a permit for a third unit. He said that it seems that the condition that the third floor not be used just continued. He said that photos were submitted in 2010 to show that the third floor was not in use. He said that his clients have renovated the third floor but there are no bedrooms up there. He said that they use the space for an additional sitting area. He said that Mr. Ko has an intestinal issue and there was only a single bath on the second floor. He said that they re-did the bathroom on the third floor. He said that he wanted to bring to the Board's attention the fact that the third floor had not been closed off. He said that his clients are upset that they may have done something that was not allowed. He said that nothing in the decision indicates anything specifically about the third floor. He said that it just talks about, as per the 1977 permit. Mr. Himmelberger proposed a modification to the special permit to allow these rooms to be used. He said that they have been improved. He said that they recognize that because this was only advertised as a renewal of the existing special permit, it could require being continued and re-noticed. He said that he has inspected the third floor and it is a remarkable space with high ceilings.

Mr. Seegel asked if another permit was issued after 2010. Mr. Himmelberger said that a second special permit carried the same number and was a renewal with a date stamp of 2012. He said that the name of the petitioner changed.

Mr. Seegel said that the special permit has three conditions on it. He confirmed that existing conditions 1 to 3 should remain in effect. Mr. Himmelberger said that one of them states that the first and second floors shall only be used for human occupancy. He said that condition 2 requires that the third floor be closed off. He said that the third condition requires the Building Inspector to inspect annually and the fourth condition stated that the permit was contingent upon compliance with the conditions. He said that his clients would be seeking modification of items 1 and 2.

Mr. Seegel asked if there was a building permit issued for the work on the third floor. Mr. Himmelberger said that he is in the process of trying to determine that. He said that he looked at the Assessor's records and they show that there were significant bathroom renovations. He said that the Assessor's record has photographs of the renovated other two units but not the third floor. He submitted photographs of what the third floor space looked like in 2010 and what it looks like today. Mr. Adams confirmed that there is still only one means of egress.

Mr. Himmelberger said that if the Board was amenable to modifying the special permit to allow use of the third floor, it could be contingent upon inspection by the Fire Department and the Building Department.

Mr. Adams asked how many people reside in the building. Mr. Himmelberger said that Ms Lee and Mr. Ko live in Unit 3, which is on the second floor and has access to the third floor. He said that they have two young adult sons who are in college who are home occasionally. He said that there is a single woman in one unit on the first floor and two older people in the other unit on the first floor. Mr. Adams said that the Board needs to see a plan of the building. He said that it is a very large house. Mr. Himmelberger said that the Board typically visits the properties. He said that Mr. Ko is at home and could easily make showing the space available. Mr. Adams said that the Building Department can attest to the habitability of the structure. He said that he was trying to figure out how it is arranged.

Mr. Seegel said that the third floor is being used as part of the second floor living space. He said that it does not need two exits. Mr. Himmelberger said that it has seven windows that he could discuss with the Building Inspector about egress. Mr. Adams said each unit needs two ways out. Mr. Himmelberger said that his clients' unit has a staircase down to the first floor as well as an entrance that they primarily use to the second floor deck where they walk down. Mr. Adams said that a single way down from the third floor would be legal.

Mr. Becker said that the Board discussed in 2010 that a previous Board was concerned about a fourth unit in 1977. He said that, in that context, the first and second conditions make sense. Mr. Adams said that whether they sleep there or not has no bearing. Mr. Becker said that the underlying issue is three family use. He said that as long as the building is three family use, how it is configured should be irrelevant, provided that it complies with the building code.

Mr. Seegel said that he did not see any reason why the Board cannot renew the special permit with new conditions. Mr. Adams said that a real concern is that if the property is sold to someone else, it could easily be turned into a rooming house. Mr. Becker said that they cannot do that legally. Mr. Seegel said that all that the Board can do is put conditions in.

Mr. Adams said that the condition to not use the space is a terrible condition because that makes it dangerous. He said that it is better to have people up there.

The Board discussed conditions. Mr. Seegel said that the third floor cannot be used for bedrooms but will be considered to be part of the living quarters of the second floor. He said that the permit will be effective for three years or shorter if there is a change of owners.

Mr. Becker moved and Mr. Adams seconded the motion to grant renewal of the special permit, subject to the conditions that the permit shall be contingent on compliance with these conditions, all applicable Rules & Regulations, and unless sooner terminated, shall continue as long as one of the dwelling units is owner occupied, the permit is contingent upon the use of the third floor as auxiliary space for the owner occupied unit with no bedrooms, and the permit shall be subject to review in three years, and the building inspector shall inspect the premises and make a report of his findings upon transfer of ownership. The Board voted unanimously to grant renewal of the special permit.

ZBA 2017-97, SCOTT SNAPPER, 39 HILLSIDE AVENUE

Present at the public hearing was Mageidor.

The Chairman said that the Planning Board recommendations stated that there is no other place for the air conditioning units. He said that there is a large expanse of public land on the side of the property. A Board member said the air conditioning units will not disturb anyone.

Mr. Adams moved and Mr. Becker seconded the motion to grant a variance to allow the air conditioning units in the side yard setback, 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 the lot, especially affecting such land or structures but not generally affecting the zoning district in which it is located, that the hardship was not self-created, and that 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 voted unanimously to grant a variance.

ZBA 2018-01, CAROL CHAOUI, 6 DENTON ROAD

Present at the public hearing was Carol Chaoui, the Petitioner.

Mr. Seegel said that the request is to enclose a portion of a farmers porch. Mr. Adams asked about the planned use of the space. Ms. Chaoui said that they will use it for extra storage space. She said that they do not have a mudroom. She said that she has four kids and two dogs. She said that there is a lot of clutter in the front entry. She said that they have been in the house for 16 years. She said that side of the house faces the retirement home at the back. She said that the space just collects junk and she would rather put it to better use.

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

Mr. Adams moved and Mr. Becker seconded the motion to grant a special permit to enclose a portion of the porch. The Board voted unanimously to grant a special permit.

ZBA 2018-03, PETER DALRYMPLE, 19 CUSHING ROAD

Presenting the case at the hearing David Himmelberger, Esq., representing Peter Dalrymple, the Petitioner. Also present was John Clancy, Architect.

Mr. Himmelberger said that the request is for relief to raze and rebuild an existing two-car garage that will better accommodate the vehicles. He said that the lot is nonconforming lot at 10,000 square feet in a district where 20,000 square feet is required. He said that the garage is a pre-existing nonconforming structure that was previously the subject of a special permit in 1993. He said that, at that time, the Board granted relief to raze a one car garage and build a two car garage with insufficient side and rear yard setbacks. He said that the Board ultimately concluded that it was a special permit, although it recognized that it was also susceptible to granting a variance because of the shape of the lot.

Mr. Himmelberger said that the proposed garage will be an improvement on what is there now. He said that Mr. Dalrymple has spoken with his neighbors at 21 Cushing Road, which is immediately to the left. He displayed a GIS map that shows the garage at 21 Cushing Road right on the property line. He said that this is an older area in Wellesley in which almost every other garage is right on the property line or very close thereto. He said that the neighbors at 20 and 18 Cushing Road have also expressed support for the project.

Mr. Himmelberger said that they believe that the special permit can be granted as the proposed alteration shall not be substantially more detrimental than the pre-existing nonconformity. He said that the Board wrestled with it in 1993 as to whether it should consider this to be a variance or a special permit. He said

that they concluded then that either was appropriate. He said that they could seek modification of the special permit to allow this or request a variance due to the shape of the lot. Mr. Seegel said that the Board will amend the special permit.

Mr. Adams confirmed that it is already a two-car garage. He asked about the second floor. Mr. Himmelberger said that the existing garage has a 16 foot entry face and the proposal is to widen it to 24 feet. Mr. Clancy said that the existing garage is 21 feet. He said that you cannot get two cars in there. He said that when there are two cars in the garage, the doors cannot clearly swing open. He said that the additional width is to allow for two cars to pull in and for people to get out. Mr. Himmelberger said that the garage will have storage on the second floor. Mr. Clancy said that the second floor area will be unfinished and there will be no plumbing.

Mr. Becker asked if there is bicycle storage at the back left corner. Mr. Clancy said that there are bikes up on racks.

Mr. Seegel read the Planning Board recommendation

Mr. Seegel moved and Mr. Becker seconded the motion to grant approval that will serve as an amended special permit to the special permit issued under ZBA 93-45. He said that the larger garage may have storage space on second floor. He said that there shall be no plumbing in the building. The Board voted unanimously to grant an amended special permit.

ZBA 2018-02, JUANN KHOORY, 18 KENDALL ROAD

Presenting the case at the hearing was Juann Khoory, the Petitioner, who said that the issue before the Board is due to an oversight concerning a canopy over the main entrance. She said that it was drawn bigger than what is allowed by Zoning, which is two feet. She said that it got permitted and built and was finished in March of 2017. She said that they are painting house, are about to finish the interior work and are about to move in.

Mr. Seegel said that he visited the property and it does not appear that Ms. Khoory is close to living there. He said that he understands what happened. He said that he has repeatedly told people who come before the Board that they have to build the house the way that this Board approved it. He said that they cannot make changes to plans when they are submitted to the Building Inspector. He said that he did not see any reason why the Board should change its decision.

Mr. Adams said that it should be put back to a two foot overhang.

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

Mr. Seegel said that the overhang will have to be taken down and rebuilt as previously approved by this Board.

Mr. Seegel moved and Mr. Becker seconded the motion to grant a variance. The Board voted unanimously to deny the request for a variance. The petition was denied.

ZBA 2018-06, C.E. HOLMAN LIMITED, 583 WASHINGTON STREET

Presenting the case at the hearing were David Himmelberger, Esq., Peter Niemitz, Architect and Peter Baker, General Manager, Smith & Wollensky. Mr. Himmelberger said that he was representing the Holman Block and the tenant, Smith & Wollensky, who will occupy the premises at 583 Washington Street.

Mr. Himmelberger said that the request is for a special permit pursuant to Section IXC of the ZBL for an outside dining area, accessory to the restaurant, with wait staff, as well as a number of special permits for signs. He said that as to the patio area, the Petitioner has gone before the Board of Selectmen for and received a license for Common Victualers and alcohol and extensions for both of those for use in an outdoor patio area.

Mr. Himmelberger said that when his client went before the Design Review Board (DRB) for signs and changes to the façade, the DRB raised issues about clearance between a tree and the outdoor patio area. He said that the area was modified. He submitted drawings that show the modifications. He said that the patio shows accommodation for 18 patrons shows at least 5 feet 3 ½ inches of clearance to the trunk of the tree. He said that DPW raised concerns about ADA compliance. He said that he spoke with Josh van Houten, who suggested that a grate be placed on the tree box, which would be compliant as long as it is flush with the ground. He said that the town has done that in the past. He said that it they would have more than the four foot minimum.

Mr. Himmelberger said that Mr. Van Houten confirmed in an email that he had spoken with Mike Quinn in the Park & Tree Department about the proposed outdoor seating. He said that DPW would prefer to have a removable railing that is removable in the winter. He said that the railing will be removable. He said that DPW would prefer to have the rail adjusted for ADA compliance, if not possible, the dirt mulch and bricks could be replaced with a metal grate and the DPW would require review and approval of the proposed specifications for the grate and installation methods, prior to installation. He said that the request is for the Board to condition its approval of the outdoor space as configured, subject to the satisfaction of DPW that the area is in compliance with ADA regulations. He said that grates are typically in four quarters or two halves. He said that the request is that a special permit be granted for the outdoor auxiliary use. He said that it came to light three years ago that the BOS had been granting outdoor patio extensions. He said that the Building Inspector called to their attention that there was no specific use for that in the bylaw and all dining had to occur within a building, which was a throw back to when the town feared outdoor dining with respect to car hops. He said that Town Meeting has since voted to allow outdoor auxiliary use with a special permit.

Mr. Himmelberger said that there is a dotted line shown on the plan that is the property border. HE said that the sidewalk use is wholly within the tenant's space.

Mr. Seegel said that the Board will not be granting a special permit for the sidewalk use. Mr. Himmelberger said that it is on a sidewalk but it is the tenant's sidewalk, not the town's sidewalk. He said that the dotted line that is shown is arced with the street and the entirety of the railing is inside the dotted line. He said that if the outdoor seating was on the town's sidewalk, they would have to get approval from the BOS.

Mr. Himmelberger said that the BOS granted his client permission to have an outdoor space, consistent with the drawings. He said that they need the Board's permission to actually use that permission. He said that they are asking for permission to use the outdoor space, consistent to and in compliance with the drawings as provided, subject to satisfying DPW that an installed grate on the tree mulch area will meet ADA compliance. Mr. Seegel said that the railing will be totally removable and removed in the winter. Mr. Himmelberger said that it will be removed from November 1st to March 31st.

Mr. Becker asked if there will be any external lighting. Mr. Himmelberger said that there will be no external lighting in this area. He said that there will be ambient light from street lights, the interior or candles.

Mr. Seegel asked if there is any intention to use outdoor heaters. Mr. Baker said that there is no intention to use them.

Mr. Adams asked how the fence posts will be secured to the ground. Mr. Niemitz said that the newell post will be a 12 by 12 steel plate on the bottom. He said that they will be able to move them in and out quickly.

Mr. Adams asked if there will be any further overhead protection beyond the awnings. Mr. Niemitz said that the awnings will project two feet from the pilasters and 30 inches from the windows. He said that they will be fixed in place.

Mr. Becker asked about the anticipated use. Mr. Niemitz said that these will be host seated full service seats. He said that you will have to go to the host first and request outdoor dining. Mr. Adams said that it appears that some of the tables can accommodate a wheelchair. Mr. Niemitz said that the tables will not be fixed in place, so that can be moved to accommodate.

Mr. Becker asked if any music systems are proposed. Mr. Baker said that they are not proposing that outside.

Mr. Niemitz said that as part of the construction they will restore the storefront above the awnings. He said that the existing awning obliterated the transom and over the years they were filled with plywood. He said that the façade will be restored and opened up with clear glass. He said that the ceilings will be raised in the front bar and lounge. Mr. Adams said that he did not have a problem with that arrangement but was concerned that the grating around the tree could be trickier than expected because you have to have smaller holes in it to accommodate someone with a walker.

Mr. Seegel moved and Mr. Becker seconded the motion to grant a special permit for the use for outdoor dining in front of 583 Washington Street, subject to conditions that a railing around the eating area shall be removable and shall be removed between November 1st and March 31st of each year, and the Applicant shall comply with all instructions of DPW with respect to ADA Act so that wheelchairs can maneuver the sidewalk around the existing tree, which means replacing what covers the tree ground with a metal grate that is satisfactory to the DPW. The Board voted unanimously to grant a special permit.

Mr. Himmelberger said that a sign package was submitted that shows modifications pursuant to the DRB recommendations. He said that DRB commented that the name, Smith & Wollensky, which was previously on the four awnings, should be reduced to the S & W initials, as shown on the revised plan.

Mr. Niemitz said that the primary sign will be in the sign band. He said that there were likely four individual tenants in the building and they would have used the space above the transom for signage. He said that the proposal is to have the sign at the entry to give prominence to it. Mr. Himmelberger said that the proposed sign will be pin mounted, black anodized, and halo lit with 18 inch letters to fit within the space. He said that the maximum allowed letter height is 14 inches but the greater height of 18 inches better balances the appearance of the sign within the architectural façade of the building. He said that DRB called out support for 18 inch lettering. He said that entirety of the sign square footage is well within the permitted 50 square feet, which is the lesser of the 10 percent of the building façade. He said that the request is for a special permit for the 18 inch letters.

Mr. Himmelberger said that Sign 2 is comprised of four identical awning valences with an S & W, with 8.75 inch letters where 8 inch letters are allowed.

Mr. Himmelberger said that Sign 3 is a blade sign that will extend from the pillar at the left of the Smith & Wollensky sign. He said that it is a unique sign in that it is a cut out of a steak knife.

Mr. Himmelberger said that Sign 4 is comprised of five 5 small white vinyl decals of S & W applied to the interior of the five panels of glass that face Washington Street. He said that the height of the signs will be 4 5/8 inches, which is well below the permissible height of eight inches. He said that each sign will be .41 square feet, for a combined total of the five signs of 2.05 square feet. He said that only two of these signs are permitted as of right but the decals serve to break up the large expanse of the window and help serve as indication of the glass window abutting an exit door.

Mr. Himmelberger said that Sign 5 is an hours of operation directory sign that meets the bylaw requirements at 1 square foot.

Mr. Himmelberger said that Sign 6 is a brass door pull on the main front entrance. He said that it is three pieces of brass and an oval with engraved black S & W lettering affixed to door pulls. He said that it will be 9 inches tall and 11 11/16 inches wide for a combined area of .57 square feet.

Mr. Himmelberger said that Sign 7 is an awning sign at the rear entrance to the restaurant from the parking lot. He said that it will have white vinyl lettering on a Sunbrella canvas awning, with 8.75 inch lettering and an overall width of 5 feet five inches, for a total area of 3.67 square feet, which is less than ten percent of the awning's area of 39.55 square feet.

Mr. Himmelberger said that the combined area of all of the signs will be 40.39 square feet, which is less than the 50 square feet that is allowed. He said that they believe that the requested signs will be in harmony with all of the purposes set forth in Section XXIIA of the Zoning Bylaw and that all of the requested signs will meet the criteria for issuance of a special permit in that the overall scale, dimensions and appearance enhance the architectural elements of the building, are in scale for passersby, and are in harmony with the general signage for the block. He said that one of the members of the DRB is the proprietor of a major department store next and was supportive of the signage, including the blade sign. He said that the DRB was supportive. He said that his clients believe that the signage passes muster with the criteria set forth in the bylaw for the issuance of special permits.

Mr. Seegel said that he did not agree with Mr. Himmelberger. He said that he found the sign package to be excessive and inappropriate. He said that there is nothing comparable in Wellesley Center to the proposed blade sign. He said that will not allow that sign. He said that the sign over the main entrance is fine at 14 inches and not needed at 18 inches. He said that there was an internationally known restaurant located here previously who fully complied with the sign bylaw and was very successful. He said that he is willing to grant the rear sign. He said that he is not willing to have all of the awnings with anything on them except for what is allowed by right. He said that he did not think that the window decals are appropriate.

Mr. Adams said that he did not have any problem with the awnings. He said that he did not have a problem with the lettering on the awnings. He said that the Board has been rigid about the sign bylaw to limit the height of lettering to 14 inches. He said that he agreed with the Chairman that the lettering will be fine at 14 inches. He said that he had no problem with window signs or with the door sign. He said that he likes the awning over the door. He said that he did not have a problem with the knife blade sign. He said that it is a little scary thinking of it falling down. He said that it might be a little large but is not unreasonably sized. He said that he is okay with the awning at the back. He said that he was concerned about access to those doors because the sidewalk seems to be raised from the parking area. Mr. Niemitz said that the rear entrance is ADA accessible. He said that there is a dust pan. Mr. Adams said that the way that the posts hold up the awning, it would not be accessible from the side. Mr. Niemitz said that the awning will only project four feet. Mr. Adams said that there is a planter there. Mr. Niemitz said that the approach is straight on from the parking lot. He said that his understanding that rear awnings are not

allowed under the bylaw but Blue Ginger had a huge awning and a sign. Mr. Becker said that was permitted prior to the new sign bylaw, so the rules for them were different.

Mr. Becker said that he did not have a lot of issues with the individual signs. He said that people do not need to be told 10 times that it is Smith & Wollensky, with four awnings, four windows, a door and a sign band. He said that is excessive. He said that he did not think that they need the same thing on all of the awnings and/or all of the windows. He said that some balance that would get closer to the overall site requirements in terms of the number of signs would be worthwhile. He said that, in looking at other things that have been done in the Wellesley Square area, blade signs are more effective because people can see them from far down the street whereas a sign in the sign band can best be seen across the street. He said that overall, the request is for too many signs.

Mr. Seegel said that he fully agreed with 90 percent of the Planning Board comments that the size of the signs is reasonable, however the letter height is not reasonable in relation to nearby development scale and sign sizes, that the quantity of signs is excessive and the length of the store does not merit having additional signs.

Mr. Himmelberger asked if the Board would be willing to entertain the removal of the window signs, a reduction of the band sign to 14 inches, removal of the blade sign, retaining only the small S & W's on the valences of the awnings, the awning at the rear entrance and the door pool.

Mr. Becker asked about the use of the door that accesses the outdoor seating area. He asked if it would be better to have signage on the second door rather than the awning signs. Mr. Baker said that door will just be for service. Mr. Becker asked why there is an opening in the fence in front of it. Mr. Niemitz said that it is a designated means of egress. He said that they need to have a three foot gap for fire egress. He said that if they did not have the opening in the patio area, the door would have to be reversed to swing inward. He said that you would have to egress through the restaurant.

Mr. Seegel asked if there was anyone present who wished to speak to the petition.

An abutter from Wiswall Street said that there will be a lot of illumination. Mr. Niemitz said that only one sign will be halo lit. Mr. Seegel said that the lighting on the sign can only be on during hours of operation. Mr. Baker said that it will be on a time clock.

Mr. Becker asked about other exterior lighting. Mr. Niemitz said that there will be two recessed lights over the front door. He said that the door is set back from the façade. He said that the lights will shine down at the entrance way. Mr. Baker said that there is a light fixture under the canopy at the rear to illuminate the sidewalk.

Mr. Niemitz said that the hours of operation sign meets the guidelines in the bylaw. Mr. Becker said that Sign 7 is a brass plaque on the door pull for the main door.

Mr. Becker moved and Mr. Adams seconded the motion to grant a special permit for: one (1) Detail #1 with a letter size of 14 inches; four (4) Detail #2's, modified to S & W at 6.5 inches on the awnings on the awnings on Washington Street; one (1) Detail # 4 on the awning at the rear entrance; and one (1) Detail #7 at the front door, subject to the conditions that lighting shall be on only when the restaurant is open. The Board voted unanimously to grant a special permit.

Mr. Seegel said that Applicant should resubmit the sign package, as voted by the Zoning Board.

As there was no further business to come before the Board, the hearing was adjourned at 10:00 pm.

Respectfully submitted,

Lenore R. Mahoney
Executive Secretary

DRAFT

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

RICHARD L. SEEGEL, CHAIRMAN
J. RANDOLPH BECKER, VICE CHAIRMAN
DAVID G. SHEFFIELD

LENORE R. MAHONEY
EXECUTIVE SECRETARY
TELEPHONE
(781) 431-1019 EXT. 2208

ROBERT W. LEVY
WALTER B. ADAMS
DEREK B. REDGATE

February 1, 2018

Juliani Meeting Room
Town Hall

Zoning Board of Appeals Members Present: Richard L. Seegel, Chairman
Walter B. Adams

ZBA 2017-99, DELANSON REALTY PARTNERS LLC, 8 DELANSON CIRCLE

Mr. Seegel moved and Mr. Adams seconded the motion to continue the meeting to the public hearing on February 15, 2018 at 7:30 pm. The Board voted unanimously to continue the meeting.

As there was no further business before the Board, the meeting was adjourned.

Respectfully submitted,

Lenore R. Mahoney
Executive Secretary