

TOWN OF WELLESLEY



MASSACHUSETTS

## ZONING BOARD OF APPEALS

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

RICHARD L. SEEDEL, 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

October 4, 2018  
7:30 pm  
Juliani Meeting Room  
Town Hall

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

### ZBA 2018-66, CRAIG BYRNES, 133 ABBOTT ROAD

Presenting the case at the hearing was Jacob Lilley, Architect and Board member of the Wellesley Historic Commission, representing Craig Byrnes, the Petitioner. He said that the request is for relief for a pre-existing nonconforming lot. He said that the request is to build two modest additions to add a second story over an existing family room and to bump out to the driveway side to add a mudroom, a new entry and part of an eat-in breakfast nook. He said that all of the additions and the house are conforming to height, setback, TLAG, and lot area coverage. He said that the only relief that they are asking for has to do with the site. He said that the modest additions take their cues from the existing house for massing, the profile of the roofline, and detailing. He said that it is an attractive 1915 house where they will preserve the hip roof, rafter tails, and wooden downspouts that they will match with a protruded gutter that looks like wood. He said that they will work with Dan Gordon on the landscaping at the side to try to make it as pleasing as possible.

Mr. Adams said that the height of the building was provided. He said that the additions will not increase the height. He asked if the height calculation is from average grade. Mr. Lilley said that the height was measured at the greatest grade. Mr. Adams confirmed that the height will be less than 30 feet 10 inches.

Mr. Adams asked if the Petitioner had spoken with his neighbors, especially the one to the right. Mr. Lilley said that the Byrnes are part of the close Abbott community. He said that his understanding is that they have met with their neighbors and received favorable support from them.

Mr. Levy asked if there will be any change to the driveway. He said that the addition will encroach into it somewhat. Mr. Lilley said that the driveway will shift so that it will not hit the addition. He said that the amount of pervious surface is to be determined but should be relatively similar to what is there today. He said that the driveway will be very close to the addition. He said that the existing garage is tucked behind the house. He said that when an addition was put on the house about 25 years ago, it created a bit of a pinch

point. He said that the thought is to have a planting area in front of it. He said that it is on a north facing side and it is heavily treed on the neighbor's side. He said whatever grows there has to be a hardy, shade loving plant.

Mr. Levy asked what the garage is used for. Mr. Lilley said that they can get one car in the garage and the rest of the space is for kids' accessories. Mr. Adams confirmed that there is no work going on in the garage.

Mr. Adams asked if the proposed drywell is intended to take account for the additional impervious surface. Mr. Lilley said that all of the rain leaders go inside, are manifolded around the basement and are discharged to the catch basin to the street. He said that, in an effort to remediate to the greatest degree that they can, they are proposing a dry well so that they can at least take care of that portion of the runoff appropriately. Mr. Adams confirmed that the gutters and drain leaders on the additions will be separate from the existing drainage system.

Mr. Adams asked if there will be any change in the topography by bringing fill onto the property. Mr. Lilley said that they do not see any change in topography at all.

Mr. Sheffield said that the elevation shown on Plan A 5 shows an exterior light on the new addition. He said that will illuminate the steps that go down at that point. Mr. Lilley said that light will probably move to within the alcove for the entry. Mr. Sheffield said that they might want to have ceiling lights in the alcove that would not be seen from adjacent properties. Mr. Lilley said that there was an attempt with the roof to bring natural light in. He said that the kitchen is inboard and does not have a lot of exterior windows. He said that the goal is to natural light in there. He said that it would make sense to bring that light into the alcove. Mr. Adams said that the Board would make that a condition of its approval.

Mr. Sheffield discussed demo delay. Mr. Lilley said that process has been done.

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

Mr. Adams moved and Mr. Levy seconded the motion that the Board make findings that the proposed alteration result in any additional nonconformities, the proposed alteration result in the intensification of existing nonconformities, and that the altered structure shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, and approve a special permit, subject to condition that the exterior light shown on Plan A 5 at the side entrance on the left side be relocated into the alcove area at the center of the addition. The Board voted unanimously to make the findings and approve a special permit.

#### ZBA 2018-67, TEAGAN PROPERTIES LLC, 38 MAUGUS AVENUE

Presenting the case at the hearing were Mike Coutu, Sudbury Design Group, and David Stern, Stern McCafferty, representing Teagan Properties LLC, the Petitioner. Mr. Coutu said that the request is for a special permit for construction of a retaining wall that is in excess of four feet within the setback. He said that the project has gone through all of the permitting phases with the Historic, Design Review and Planning Boards.

Mr. Coutu said that they have had substantial discussions with the neighbors. He said that they held a meeting that over 20 people attended. He said that they have met with the direct abutter who the wall may impact the most for a couple of off line meetings.

Mr. Coutu said that the wall will allow them to turn the front loading garage doors to the side and provide enough turning and parking area to get in and out of the garage. He said that will give them the opportunity to save some trees that are adjacent to the wall that give protection to the direct neighbor. He said that the proposed project will have no detrimental effect on the neighbors and will be beneficial to the neighbor where the parking court and car activity will be depressed.

Mr. Adams said that he would have appreciated seeing plans for the garage so that the Board could see how it integrates into the work that the Petitioner is seeking relief from. He said that the garage is of right and does not need relief from the Board. Mr. Coutu displayed pictures of the proposed project.

Mr. Adams asked if there is a certified plot plan. Mr. Coutu said that a full engineering package was submitted to and reviewed by George Saraceno, Wellesley Department of Public Works. Mr. Adams said that the Board will want to have a certified plot plan for the record. Mr. Adams said that the plan that was submitted does not show the original or the proposed garage. He asked if the portion of the garage that is being removed would have projected somewhat into the paved parking court? He said that there is a bylaw requirement of 30 feet to the side lot line. Mr. Coutu said that it will be 35 feet from the proposed wall and the proposed wall is inside the property line.

Mr. Coutu said that the retaining wall over four feet in height will require a building permit as well. He said that the highest point is seven feet. Mr. Sheffield said that Wall Elevation and Plan 5.0 shows the wall at eight feet from grade to top of wall. He asked if the intent is for any planting on the uphill side of the wall. Mr. Coutu said that there is substantial hedge for privacy from the neighbor. Mr. Sheffield confirmed that the hedge will be thick enough to serve as a barrier to keep people from falling over the wall.

Mr. Adams asked about drainage. Mr. Coutu said that there was a drainage plan submitted as part of their application. He said that they will have some porous pavement but they cannot use a lot of it because of high groundwater. Mr. Sheffield confirmed that the drainage plan will be submitted to the Building Inspector as part of the application package.

Mr. Sheffield said that the Board received the letter of recommendation from the DRB.

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

Mr. Sheffield read the Planning Board recommendation.

Mr. Levy moved and Mr. Adams seconded the motion that the Board make findings that the retaining wall is otherwise in compliance with the provisions of Section XXIID. Retaining Walls, the requested retaining wall will not adversely impact adjacent property or the public, the report of the Design Review Board has been received and the requested retaining wall is consistent with that report and those criteria contained in Section XXII, Design Review, Part C., Design Criteria, of the Zoning Bylaw, the proposed retaining wall is the minimum structure necessary to allow a subject property to be reasonably utilized, and approve a special permit, subject to the condition that a certified plot plan that shows the retaining wall be submitted.

ZBA 2018-69, JOSHUA & NATHALIA GOODMAN, 68 CREST ROAD

Presenting the case at the hearing were Michael Hally, Architect, Joshua and Nathalia Goodman, the Petitioner.

Ms. Goodman said that they have been residents of Wellesley for nine years. She said that 68 Crest Road has an 1895 farm house where they live with their four children. She said that it is a little small for their family. She said that the request is for relief for front and side yard setbacks for an addition to the house.

Mr. Goodman said that the house is pre-existing nonconforming with less than required front and side yard setbacks. Mr. Adams said that the nonconformities will not be made worse.

Mr. Adams said that he looks for projects to be designed in a way that minimizes the continuation of existing nonconformities in the additions to the fullest degree possible. He said that the design could have shifted six feet over without seriously impacting the first and second floors. Mr. Hally said that the issue was trying to get all of the spaces to work. He said that the house is over 100 years old. He said that they tried to get a working kitchen and a family room. He said that they looked at stretching into the center of the lot but found that they would end up with a longer and bigger addition. He said that topography was also a consideration. He said that it was important to keep the house tight. He said that they will expand the existing kitchen on the first floor for the new kitchen. He said that the family room will be right behind it and will open up to a play area in the back yard. He said that there will be a mudroom between the family room and the garage that has to have stairs to take you down because of the topography. He said that the more that they tried to take advantage of the lower middle of the lot, the bigger the footprint got. He said that they wanted to take advantage of the three big interior spaces of family room, kitchen and eating area, which should be in close proximity. He said that they expanded some space in the existing house and went off the back with the family room and garage. He said that the portion of the building that is closest to the lot line are single story and does not become two story until about 11 eleven feet into the existing house. He said that they hope to take some of the excavation and put it behind the house to bury the foundation areas and create a flatter space.

Mr. Hally said that the second story will be from 9.6 plus 11 from the side lot line. He said that the first floor will be 9.6 feet from the side lot line.

Ms. Goodman said that part of their plan is to not add something that seems like an addition. She said that they wanted to bring this back to the way that a farm house would be. She said that to walk into the house if part of it was shifted to the side would feel like, "here is the old and here is the new." She said that the neighbor at that side has a very tall retaining wall and her house is set higher up. She said that the addition will not be visible to the neighbor. Mr. Goodman said that they shared the plans with the neighbors and they were happy with them. He said that the neighbor on the left was concerned that the large pines not be cut down and they will not be. He submitted a letter of support that was signed by nine neighbors.

Mr. Adams asked about the existing driveway. Mr. Goodman said that the plan is to remove and make it greenspace. Mr. Adams said that the plot plan shows it remaining. – condition –

Mr. Sheffield said that the plot plan should show the dimension from the addition to the side lot line at 13.6 feet. Mr. Adams said that the plot plan should indicate that the driveway will be removed.

Mr. Sheffield said that in the kitchen plan, the building code requires a dimension from the stove to a window. Mr. Hally said that he will look into it.

Mr. Sheffield discussed the geometrical change over the sliding doors shown on Plan A-4. He said that the sliding doors might benefit by continuing the eyebrow, which would help with water intrusion and might tie

the architecture together. Mr. Hally said that they could extend the hip roof around and extend it. Mr. Sheffield said that it would be good to tie the two forms together.

Mr. Levy said that a curb cut will be required. Mr. Goodman said that there is no curb there. He said that there is no sidewalk there. He said that in 1928, the Town took over the front part of the property to build the road, which is why they have the nonconformity on the front.

Mr. Sheffield asked about proposed lighting at the back of the house. Mr. Hally said that there will be a couple of flanking wall mounted lights on either side of the slider. He said that if the budget allows, they may bury some lights in the risers. Mr. Sheffield said that an eyebrow might allow for some soffit lights as well. Mr. Hally said that the farmers porch at the front will be wrapped around the house. He said that there will be recessed lights buried in the ceiling of the porch. He said that there is also an eyebrow roof with recessed lights over the garage doors.

Mr. Adams asked about plans for drainage. Mr. Hally said that it is a huge lot and the house is on the higher side. He said that the plan is to have runoff captured in the lawn. He said that the slope of the driveway will probably be slightly elevated. He said that it will probably go down when it leaves the road and then the apron will take it back up to the garage. He said that runoff from the driveway and the house will go to the center of the yard. He said that he did not believe that drywells would be necessary, given the open greenspace.

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

Mr. Sheffield read the Planning Board recommendation. He said that the Planning Board recommended that a tree be planted to the left of the proposed driveway. Mr. Sheffield said that the Town has a planting program that could provide a tree.

Mr. Adams moved and Mr. Levy seconded the motion that the Board make findings that the proposed alteration will not result in any additional nonconformities, the proposed alteration will not result in the intensification of existing nonconformities, the altered structure shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, and approve a special permit, subject to a condition that an updated plot plan that shows the dimension to the proposed addition at the rear and removal of the existing driveway be submitted. The Board voted unanimously to approve a special permit.

#### ZBA 2018-69, PAUL DELANEY, 251 & 251A WESTON ROAD

Presenting the case at the hearing were David Himmelberger, Esq., representing the owners of 251 and 251A Weston Road, Paul and Kimberly Delaney, the Petitioner. He said that the Mark, Paul and Nancy are trustees of the Delaney Trust. Also present was Paul Delaney, who is a lifelong Wellesley resident.

Mr. Himmelberger said that the request is for a variance to remove a portion of the rear of 251 Weston Road, which currently contains a nonconforming garage, and to convey the land and the garage to 251A Weston Road, subject to the condition that the existing nonconforming home at 251 Weston be razed and the reorientation of the garage to face 251A, effectively making it a side facing garage. Mr. Adams confirmed that turning the garage would be accomplished by changing the location of the walls and the doors, not physically turning the garage structure.

Mr. Himmelberger said that Zoning relief is necessary because 251A is a nonconforming lot that pre-dates Zoning. He said that it has no frontage and is less than 10,000 square feet. He said that with the addition of 3,135 square feet, the lot will be 9,887 square feet, which is still nonconforming. He said that the relief requested is similar to a petition that the Board acted on at 28, 30, and 32 River Ridge, where lot lines of nonconforming lots were reconfigured. He said that with this petition, the primary benefit will be that 251 will become fully compliant. Mr. Adams said that the lot is compliant but the structure is noncompliant. Mr. Himmelberger said that by condition the variance upon the razing of 251, there will be no opportunity to come back to seek a special permit to rebuild as a pre-existing nonconforming structure. He said that by conditioning the conveyance of the parcel to 251A, upon the razing of the structure at 251, it will leave a fully compliant lot upon which only a dimensionally compliant home can be built.

Mr. Himmelberger said that none of the setbacks will be worsened by the conveyance. He said that the shape of lot 251A provides the basis for applying a variance and it can be done without detriment to the Zoning Bylaws. He said that the variance would be unique to this property's shape, not generally affecting land or other structures in the Zoning district, and desirable relief can be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw. He said that it will take two existing nonconforming lots, by virtue of nonconforming structures in one instance and nonconforming frontage and lot area in the other, and making 251 a fully compliant lot with a compliant structure on it.

Mr. Sheffield confirmed that the action will not create a new nonconformity. Mr. Himmelberger said that they will take the nonconforming garage that is currently associated with 251 and make it less nonconforming at 251A, based on setbacks.

Mr. Levy questioned how the Board can do this on a piecemeal basis without seeing an end plan. He said that the house at 251 will be razed and the proposal is to build another structure there. He questioned why a conforming house is not built at 251 since the lot itself is conforming. Mr. Himmelberger said that the garage at 251 is nonconforming. He said that the plan is to demolish the house but not the garage.

Mr. Levy asked if Mr. Delaney is a beneficiary to the trust for 251A. He asked if the lots would be merged for Zoning purposes. Mr. Himmelberger said that they are legally different entities. Mr. Levy said that you can go behind the trust to look at who the beneficial owners are. Mr. Himmelberger said that it is not merger because there are two existing lots on which there are two existing houses that pre-date zoning.

Mr. Levy asked what the variance would be granted for. Mr. Himmelberger said that the variance is that, by adding Parcel A to 251A, they are creating a lot without frontage, adequate area, and insufficient setbacks. He said that this is predicate to seeking an ANR. He said that they cannot get an ANR without first getting a variance to allow the area to be added. Mr. Sheffield asked about razing and building a new house at 251 and then changing the lot line. Mr. Himmelberger said that they would face the same issue that by adding the two parcels they will need a variance because it will not comply with Zoning.

Mr. Levy asked about maintaining the status as a nonconforming lot at 251. Mr. Himmelberger said that, as a condition of the variance, they would be required to take the house down. He said that when a variance establishes a nonconformity, you cannot use that as a pre-existing nonconforming condition.

Mr. Sheffield asked if the driveway will be an easement. Mr. Himmelberger said that the driveway is already a deeded easement over 251 for the benefit of 251A. Mr. Adams said that it is not labeled on the plan.

Mr. Levy questioned whether the lots are merged for zoning purposes as being under common ownership. Mr. Himmelberger said that there are two other beneficiaries, so there is no sole identity of ownership. He said that, based on that, they do not merge. He said that 251 will become fully conforming once the conveyance is made and the house is razed. He said that the only relief will be for 251A. Mr. Levy said that 251 is a conforming lot but the house is nonconforming.

Mr. Levy asked if this would be a self-imposed hardship. Mr. Himmelberger said that the lots pre-date Zoning and the Applicant did not create the lots. Mr. Levy said that the request is to use the shape of the lot at 251A in order to change 251, which is not irregular. Mr. Himmelberger said that the focus should be on 251A because that is the lot that will need the Zoning relief. Mr. Adams said that the change will make 251A less nonconforming.

Mr. Levy questioned what variance the Board would be granting. He said that 251A is looking to get a variance from property that it does not own. He said that Mr. Himmelberger asserts that the properties are not merged because they have different owners but 251A is seeking relief on a parcel that it does not own. Mr. Himmelberger said that they are seeking a variance for the purpose of allowing the conveyance. He said that the both of the properties owners are applying for the relief. He said that currently the side yard setback for the garage is 10.4 feet and it will go to 10.5 feet, which is an improvement.

Mr. Sheffield asked if any of the surrounding neighbors will be adversely affected by this change. Mr. Himmelberger said that his client spoke with all of the abutters and they are supportive of it.

Mr. Adams said that if the Board grants a variance to 251A, the only way that they can come back is for a modification to a variance.

Mr. Levy read the Planning Board recommendation. He said that they recommended the ZBA seek input from Town Counsel due to the number of complications in this petition. He said that the Board typically sees variances where the lot line, the frontage, the height or dimensional requirements are varied. He said that this will create a new lot that is completely noncompliant. He said that 251A will never have adequate frontage.

Mr. Himmelberger said ANR's are not dependent on Zoning. He said that if Parcel A did not have a garage on it, they could get an ANR to add it on to 251A. He said that they want to keep the garage. He said that the ANR is discretionary on the part of the Planning Board. Mr. Levy said that if they meet all of the requirements of the statute, then approval is not required. Mr. Himmelberger said that this case has gone to Town Counsel, who has said, in connection with River Ridge, that the ANR is discretionary on the part of the Planning Board when it is a nonconforming lot. He said that the issue with ANR is that there is adequate frontage and lot size. He said that they can approve an ANR if there has been a variance that allowed the creation of the new lot that is still nonconforming. Mr. Levy said that this will have to go back before Town Counsel, in any case. Mr. Himmelberger said that this is consistent with River Ridge and Town Counsel's input that there is no issue with granting of relief by ZBA but the ANR Plan was discretionary upon the Planning Board. He said that the issue becomes how there would be any substantial detriment to the public good or nullification or derogation from the intent of the Zoning Bylaw. He said that this proposal will create a better set of conditions that are more consistent with Zoning, as 251 will become fully compliant.

Mr. Levy said that he had never been involved in a case where a variance was granted to create a lot. He said that variances are granted for frontage and other dimensional requirements. Mr. Adams said that the

Board will grant relief for frontage, lot area, and front and side yard setbacks for the garage. Mr. Himmelberger said that it will create a new nonconforming lot. Mr. Adams said that a benefit is that addition of Parcel A will increase the size of 251A. Mr. Levy said that he is not objecting to the end result but wanted to determine if granting a variance is the correct procedure.

Mr. Himmelberger said that the lot is already a legal undersized lot. Mr. Levy said that Parcel A is not a legal lot. He said that Lot 1 is. He said that the garage is pre-existing nonconforming. Mr. Himmelberger said that the request is to combine Parcel A with Lot 101. Mr. Levy said that Parcel A would have to be created to do that. Mr. Himmelberger said that they want to have the ability to create a lot that includes Parcel A and 251A. He said that the newly combined lot will not have frontage or sufficient lot area. Mr. Levy asked which provision of the Zoning Bylaw will be varied. He said that the Planning Board has to create the new lot. Mr. Himmelberger said that the Board can insert a condition that the variance is conditioned upon successfully obtaining an ANR. He said that the request is to allow the creation of a new lot that is 9,827 square feet with inadequate frontage. Mr. Adams said that the Applicant will not be able to do anything with the relief that the Board grants until the Planning Board acts on the ANR. Mr. Himmelberger said that the Planning Board will not take this up unless or until a variance is granted. Mr. Adams said that the Planning Board could deny the ANR.

Mr. Adams said that the River Ridge had a benefit that this case may not have. He said that it took two lots and subdivided them to create an odd shaped lot that would allow a new home to be built further back from the street. He said that was a benefit to the neighborhood. Mr. Himmelberger said that the lot that was ultimately to be created still had inadequate frontage. He said that the Board granted a variance subject to the tearing down of 28 River Ridge and conveyancing would not be done until they had an ANR.

Mr. Levy said that if this is allowed, the existing house at 251 will be razed and a conforming house will be built. He asked about plans for 251A. Mr. Himmelberger said that they will reorient the garage openings so that it is side facing. Mr. Himmelberger said that the conditions will be razing the existing structure at 251, reorienting the garage and recording of an ANR showing the reconfiguration of the lot. He said that if any of those conditions do not happen, the variance does not exist.

The Board discussed variance standards. Mr. Adams there is a unique shape of lot. He said that the matter of hardship is subject to interpretation. He said that the proposed change seems to be a benefit to the neighborhood.

Mr. Levy said that he would have liked to have seen a total plan for this. He said that he did not want to see 251A coming in next year for a Section 6, razing that and building a bigger house. He said that he would also like to see where the easement is. Mr. Himmelberger is unchanged. He said that it is shown on the plot plan as a dotted line that bends as it gets up to the garage. He said that it runs along the common property line. Mr. Adams said that the lot itself does not have enough room to get an egress path to the street. He said that there is no requirement that they have a driveway. Mr. Himmelberger said that the easement is fully deeded.

Mr. Adams said that the Board will need to see the plan that shows that the garage will be reoriented. Mr. Himmelberger said that the garage doors now face towards Weston Road and will be reoriented towards what is now the common property line for a 90 degree change. He said that the building will not change dimensionally. He said that the ANR Plan will require Town Counsel to weigh in because of the approval with a nonconforming lot.

Mr. Levy said that the Planning Board has concerns. He said that it makes sense to do this in a more streamlined process in getting the Town Planner and Town Counsel involved to see if this whole scheme is something that they would endorse. Mr. Himmelberger said that they went to the Planning Department and were told that this is the pathway that they blessed. Mr. Levy said that is not consistent with the Planning Board recommendation. He said that an ANR was granted on River Ridge because it created a better condition that was still not compliant. He said that the situation is similar here because it will create better lots for Zoning.

Mr. Levy said that the shape of this lot is not causing the hardship. He said that what is causing the hardship is the size. He said that the irregular shape does not cause the hardship. He said that the Board cannot grant a size variance. He said that the hardship must be due to the shape, topography or soil condition. Mr. Himmelberger said that the shape is creating a hardship. Mr. Levy said that if this lot had a regular shape, the Petitioner would still be seeking the same relief.

Mr. Adams said that Chapter 40A does not say that the unique factor, whether it is shape, topography or soil conditions has to be the hardship. Mr. Levy said that you cannot have wetlands at the back of your lot and ask to improve the front of the lot if the wetlands have nothing to do with the relief that you are seeking.

Mr. Adams said that the variance would go with 251A, and the new lot at 251 will have a condition that the house must be demolished.

Mr. Himmelberger said that the Board has stated that it is its mission to strive for greater conformity to the Zoning Bylaw, which this does. He said that there is nothing that precludes 251 from granting an easement to 251A for all of Parcel A but they would be left with two pre-existing nonconforming lots by virtue of nonconforming structures under that scenario.

Mr. Levy said that only the Trust signed the application for the petition. Mr. Himmelberger said that Mr. Delaney is the record owner of 251 and a Trustee of 251A Weston Road. He said that there are three Trustees.

The Board discussed sending the matter to Town Counsel for review. Mr. Levy said that he would prefer to get Mr. Zehner and Town Counsel involved to look at the whole scheme. Mr. Adams questioned whether there should be two separate applications, one for each of the properties. Mr. Himmelberger said that there is only one mission here to create a new lot. He said that there is no relief being sought by 251. Mr. Levy said that it is to create a new lot involving property that it does not own. He said that it anticipates that it will acquire it. Mr. Himmelberger said that they cannot convey it ahead of that.

Mr. Levy said that this is not a typical variance. He said that the Board can say that the hardship is related the shape of the lot. He said that the hardship is related to the Petitioner wanting to add a parcel and a garage, which has nothing to do with the shape.

Mr. Adams said that even if they demolished both of the structures, they could not create two compliant lots.

Mr. Himmelberger said that the only is that the Planning Board will not render a decision without the variance. He confirmed with Victor Panak, Town Planner, that Town Counsel's opinion on River Ridge was that the Planning Board's endorsement of an ANR was discretionary, even though a variance had been granted. He said that if the Planning Board does not endorse the ANR, the variance is not fulfilled.

Mr. Levy asked about the substantial hardship. Mr. Himmelberger said that they would like to acquire land to make themselves more conforming. He said that they are currently in a hardship in that they do not have greater land than they have, they do not have a garage and would like to acquire one. He said that if Parcel A did not have a garage on it, they would still require Zoning relief to add it to 251A because they would be creating a nonconforming lot. He said that all that they are seeking to do is to make 251A a better lot and make 251 fully a compliant lot on which a compliant structure sits.

Mr. Levy said that he would be willing to speak with Town Council to see what his opinion is. Mr. Himmelberger said that Town Council was aware of the reconfiguration of the lots for which variances were sought at 28, 30 and 32 River Ridge. He said that Town Council has previously reviewed a similar situation. Mr. Levy said that there may have been other hardships there. He said that he did not see a hardship here other than wanting to do it.

The Board discussed continuing the hearing.

Mr. Himmelberger requested that the submittals that he made be submitted to Town Council.

Mr. Adams moved and Mr. Levy seconded the motion to continue the petition to November 1, 2018 and send a copy of the application to Town Council. Mr. Himmelberger said that he will submit a follow up letter trying to frame the issues. Mr. Levy asked Mr. Himmelberger to also focus on what section of the bylaw the variance would require relief from. The Board voted unanimously to continue the hearing to November 1, 2018.

Mr. Adams suggested that a modified plot plan that shows the driveway easement and at least a notation about reorientation of the garage doors be submitted.

9:15 pm – new plot plan