

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

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

June 7, 2018
7:30 pm
Juliani Meeting Room
Town Hall

Zoning Board of Appeals Members Present: Robert W. Levy, Acting Chairman
Walter B. Adams
Derek B. Redgate

ZBA 2018-40, BETH & CHARLES DUBLIN, 15 COLGATE ROAD

Presenting the Appeal were Jacob Gadbois and Charles Dublin, the Appellant. Mr. Gadbois said that the request is to review the decision of the Building Inspector to deny approval because there is a corner lot that they used to determine the front yard setback. He said that within 425 feet there is a corner lot that has a front yard setback of 35.4 feet. He said that the proposed porch at 15 Colgate Road will have a 41 foot front yard setback. He said that they were denied due to the fact that the corner lot has a different address. Mr. Dublin said that it has a different street address even though it is on the same side of the street and is within the 500 foot threshold.

Mr. Levy said that the Zoning Bylaw has a provision, known as the 500 Foot Rule. He read an excerpt from Section XIX, of the Zoning Bylaw. He said that the Building Inspector looks at houses within 500 feet and whichever house is closest to the street sets the setback for the house being reviewed, provided that it is at least 30 feet. He said that the Applicant is looking to use an address on an intersecting street as frontage. He said that a corner lot has two front yards. He said that a dimension is shown on the plan to the corner of Pembroke Road. Mr. Dublin said that it is a little closer than 35.4 feet to Pembroke Road and a little further from Colgate Road. Mr. Levy said that if the Board was to conclude that 35.4 is the appropriate setback, it appears to be closer than the other lots on Colgate Road.

Michael Grant, Building Inspector, said that the 500 Foot Rule has been in the town since 1939. He said that it is very vague. He said that part of his job in the town is to maintain the intent of the bylaw. He said that his interpretation has also been used by previous Building Inspectors. He said that he looks at the address when it comes to a corner lot. He said that one side of the lot will always have the 500 Foot Rule apply but not the other side of the lot. He said that the 500 Foot Rule does not turn a corner. He said that it stops at the intersecting or entering street. He said that because the house on the corner has a Pembroke Road address,

the 500 Foot Rules only applies to the Pembroke Road side. He said that it would allowed the house at 15 Colgate Road to be placed closer than other houses on Colgate Road. He said that it has been his practice to not allow houses on Colgate Road to use a Pembroke Road address to determine the 500 Foot Rule because that could change the streetscape on Colgate Road. He said that a plan was provided to the Building Department through emails but it is not a certified plot plan. He said that 15 Colgate Road has an existing front yard setback of 45 feet. He said that the other houses on Colgate Road have front yard setbacks of 50 and 50.5 feet. He said that 15 Colgate Road is the closest to the street. He said that he was trying to maintain the streetscape on Colgate Road, not Pembroke Road. He said that it has traditionally been held not to allow a corner lot on one side to change the streetscape on the subject street.

Mr. Levy questioned whether, since the corner lot on Pembroke Road has two front yards, the front frontage on Colgate Road could be used. Mr. Grant said that if you have houses that maintain a consistent setback on one street and the 500 Foot Rule did not turn the corner, you would change the intent of the 500 Foot Rule to maintain a streetscape of a given street. Mr. Levy confirmed that Mr. Grant based his determination on address, not on front door. Mr. Grant said that there is nothing in the bylaw that addresses corner lots for the 500 Foot Rule. Mr. Levy said that it is his understanding that the 500 Foot Rule was originally intended for infill lots so that the streetscape would be maintained. He said that as there are few infill lots left in Wellesley, this had become more germane for renovations such as this one.

Mr. Grant said that he told the Applicant that he would need a variance because he would be creating a new nonconformity.

Mr. Adams asked Mr. Grant if he knew what the corner lot provisions were at the time in 1939 when the provision for 500' rule established. Mr. Grant said that he had only researched the age of the bylaw to see when it came into effect.

Mr. Levy asked if 50 feet is what Mr. Grant concluded is the proper setback. Mr. Grant said that the existing house at 15 Colgate Road has a 45 foot front yard setback. He said that the front entry porch is in excess of what is allowed under the exemption in the bylaw, so they can use that for their setback. He said that they happen to be the closest house. He said that the closest house get punished under the 500 Foot Rule because you would need a variance to come closer to the street.

Mr. Redgate asked if the proposed addition is entirely front porch. Mr. Dublin said that the front porch is what is involved in the issue with the 500 Foot Rule.

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

Mr. Dublin asked if there is any precedence for the 500 Foot Rule to be broken. Mr. Levy said that it is a bylaw of the town that this Board has always enforced. Mr. Adams said that each case is unique and the Board does not base its decisions on precedence.

Mr. Dublin said that he agrees with the concern about pushing houses out and affecting the appearance of the street. He said that they the street to look as good as possible and think that this will contribute to that. He said that one of the arguments that he heard was that if they extend out, others neighbors will want to extend out. Mr. Levy said that they would have right to extend out. Mr. Dublin said that it would be a three foot difference. He said that he sees large houses go up all the time that seem to break all of the rules. He said that they are monsters in relation to the lot. He said that this seems to be a minor request in the grand scheme of things. He said that the house on Pembroke Road that was discussed at the hearing has almost no

yard. He said that they are beautiful homes but in terms of the size of house in relation to the lot, they are massive. He said that it is a question of fairness. Mr. Levy said that the Board would assume that the houses either comply with Zoning or had appropriate relief granted. He said that what is before the Board is this petition and that it what the Board will address.

Mr. Redgate said that the original intent of the bylaw was to control infill lots as opposed to existing lots. He said that in this case, if there was no 500 Foot Rule, the setback could be 30 feet where all of the other houses had a 50 foot setback. Mr. Levy said that he was not around when the bylaw was enacted but has sat on the Board for many years and that is his understanding of the original intent of the bylaw. He said that there have been several matters that have come before the Board over the years relative to this rule. He said that several years ago there was a warrant to amend it but it did not pass at Town Meeting. He said that the Board is bound by the bylaw, the purpose is such that no house will change the streetscape by being substantially closer than houses in the vicinity.

Mr. Adams said that 15 and 11 Colgate Road look similar and may have been built around the same time. He said that they were slightly closer to the street than the adjacent properties on either side. He said that he did not know when the front porch was constructed at 15 Colgate Road. He said that there was nothing in the record to show that relief was granted for the front porch. He said that the porch was probably part of the original house or was found to be acceptable in terms of Zoning compliance. He said that whether the bylaw was to give guidance to infill on vacant lot or recognition that once a streetscape is established it should not be allowed to change dramatically, allowing this porch, given its size, would not comply with the 500 Foot Rule.

Mr. Levy read the Planning Board recommendation.

Mr. Redgate asked Mr. Grant if he ever used a corner lot in relation to the 500 Foot Rule. Mr. Grant said that if the corner lot had a Colgate Road address, he would use it. Mr. Redgate confirmed that Mr. Grant would not use a corner lot with an address on another street. He asked if Mr. Grant makes any Building Inspector determinations if it is a closed versus an open porch. Mr. Grant said that a porch is a structure and this does not meet any of the exemptions under the front definition.

Mr. Levy said that they would use the corner lot if they were looking at another Pembroke Road address. He confirmed that the determination is based on the address, not the orientation of the house. Mr. Grant said that the bylaw does not mandate where the front door faces. He said that there are a few instances in town where the front door does not face the street. He said that he applies the 500 Foot Rule to the street address. He said that he has had people change their address to get an advantageous 500 Foot Rule on a corner lot. He said that there has to be some mechanism to maintain the streetscape. He said that the bylaw is very silent on corner lots in many ways. He said that if the 500 Foot Rule applied to both sides of corner lots, many of them would be unbuildable. He said that most houses on corner lots are usually closer to one street than the other. He said that when he first became a Building Inspector for the town, he drove around town and looked at old plot plans to get a sense of what happened in the past to maintain consistency. He said that the 500 Foot Rule does not turn a corner. He said that it stops at the intersecting street. He said that the intent of the bylaw was to maintain streetscape. He said that he tried to maintain the streetscape of Colgate Road by not allowing the Pembroke Road address to be used.

Mr. Redgate said that this is a renovation where the house is staying intact.

Mr. Adams moved and Mr. Redgate seconded the motion to deny the appeal and the uphold decision of the Building Inspector. The Board voted unanimously to deny the appeal and to uphold the decision of the Building Inspector.

ZBA 2017-92, OLIMPIU DEJEU, ETAL, RIVER RIDGE

Presenting the case at the hearing was David Himmelberger, Esq., who said that the request is for a minor modification and extension of previously granted variance for six months. He said that the variance was granted and date stamped on December 21, 2017, and was conditioned upon the existing nonconforming structure being razed prior to or effective upon recording of any subsequent ANR or subdivision approved by the Planning Board. He said that following the Board's decision, the Petitioner submitted an ANR Plan and that was endorsed by the Planning Board. He said that the plan incorporated the variances that had been granted. He said that, as 28 River Ridge was constructed prior to 1949, which is the trigger date for review by the Historical Commission under demolition. He said that on April 12, 2018, the Historical Commission determined that the structure at 28 River Ridge was deemed preferably preserved and imposed a one year demolition delay to run through April 12, 2019. He said that the earliest that the existing nonconforming structure could be razed is April 12, 2019 but this date falls after the expiration of the 12 month period following the Board's December 21, 2017 decision. He said that, pursuant to MGL, Section 40A, 10, the Petitioner is requesting that the Board extend the variances for a period of six months such that they will now run through June 21, 2019.

Mr. Levy said that the minor modification was not published. Mr. Himmelberger said that they are seeking a determination that it is a minor modification to the plan that was previously submitted.

Mr. Levy said that the Petitioner is looking for two reliefs, one is an extension and the other is a minor modification. He said that the Board's only authority is to grant one six (6) month extension of the variances.

Mr. Redgate moved and Mr. Adams seconded the motion to grant a six month extension of the variances through June 21, 2019. The Board voted unanimously to grant a six month extension.

Mr. Himmelberger said that, subsequent to the Board's decision granting various variances, the Applicant determined that it would be more beneficial to slightly alter the proposed lot line between 28 and 30 River Ridge. He said that the revision will not alter the frontages for which the variances were granted. He said that it will slightly widen the rear of what could be determined to be the driveway area from 28.1 feet to 32 feet, to better allow for the construction of a driveway. He said that the land falls sharply to the west. He said that a copy of the previously approved plan showed a 28.1 foot width of the rear of the driveway. He said that the revised plan that was approved by the Planning Board depicted the width at 32 feet. He said that this will not alter the frontages in any way but will taper towards the rear of the driveway.

Mr. Levy asked if the request for a minor modification is to substitute the plans. Mr. Himmelberger asked that the variances be based on the January 29, 2018 Plan. Mr. Adams confirmed that the rationale is that it does not change the basis for needing to seek relief before, just a change in the plan.

Mr. Redgate asked about the square footage for the change. Mr. Himmelberger said that they are proposing that the area for 28 River Ridge will be 20,610 square feet, as opposed to 20,307 square feet, as previously approved. He said that there will be a decrease in 30 River Ridge from 11,232 square feet to 10,929 square feet. Mr. Redgate said that the properties are located in a 10,000 square foot Single Residence District. Mr.

Adams said that this does not affect the previously approved modification of the property line for 32 River Ridge.

Mr. Adams said that there is a clear rationale for why this is being done. He said that he lives three houses away from this property. He said that he is aware that there is a significant slope from the property at 32 River Ridge down to the property at 28 River Ridge. He said that the more room that can be provided to allow for two separate driveways to parallel each other on the newly created properties will benefit the design. Mr. Redgate said that he agreed.

Mr. Redgate moved and Mr. Adams seconded the motion that the Board consider the proposed changes a minor modification that does not require a public hearing. The Board voted unanimously to make a determination that the proposed change is a minor modification that does not require a public hearing.

Mr. Redgate moved and Mr. Adams seconded the motion to allow the minor modification to the previously approved variances. The Board voted unanimously to allow the minor modification to the previously approved variances.

ZBA 2018-35, PAUL & TAMARA BATTAGLINO, 29 LONGMEADOW ROAD

Presenting the case at the hearing were Kevin Gordon, Paul and Tammy Battaglino, the Petitioner.

Ms. Battaglino said that the house was built in the early 1900's. She said that it lacks some of the functionality that they need. She said that they are focused on renovating versus tearing down their home. She said that they are seeking to preserve the character of the home, fit in with the neighborhood and meet the needs of their family. She said that they would like to build a functional garage. She said that they cannot fit anything larger than a compact vehicle in the existing garage. She said that they are looking to add a handicapped bedroom for a handicapped family member. She said that they would like to improve the functionality of their kitchen and add some storage.

Ms. Battaglino said that all of the proposed addition will be within the 20 foot setbacks. She said that they are requesting a variance because there is one corner of the garage door that is just short of the 30 foot setback that is required. She said that their builder had originally recommended that they build the garage on the right side of the house, which would fit within the setbacks but would require that they knock down a stone wall on their property that was part of the Baker Estate. She said that knowing the importance of that structure to their neighbors and themselves, they sought to keep that in place. She said that the unique or odd nature of the lot shape is a contributing factor and challenge. She said that all of their neighbors expressed full support for the plans, even though it is just shy of the setback. She said that they hope to make the home more functional and up to date with today's living standards. She said that given the size and nature of their lot and what they believe is a *di minimis* and the support of all of the neighbors, the hope is that the Board consider the request for a variance.

Mr. Redgate asked about the stone arch on the right side of the house. He said that people in the neighborhood take prom pictures and wedding photos there. Ms. Battaglino said that they bought the house about ten years ago from a woman who was the second owner. She said that it is her understanding that the stone arch was built in the mid to late 1800's and was the entrance to a carnival at the Baker Estate. She said that it is a unique structure and is striking on the property. She said that they view it as not just a history of the house but also of the town. She said that it is something that their neighbors have voiced through the years that they love. She said that a neighbor told her that all ten of her children had been married under the

arch. She said that many of their neighbors on Longmeadow Road have lived there for decades and have fond memories of it, as they have over the past decade. Mr. Battaglino said that it is a very unique structure. He said that they love it and everyone who comes to the property asks about it. He said that the woman that they bought the house from gave them documentation about the arch. Ms. Battaglino said that they are hoping to work the arch into the renovations.

Mr. Levy said that the application was for a variance, which is what the Petitioner has been addressing tonight. He said that it is an undersized lot and they would need a special permit for the balance of the renovation as a pre-existing nonconforming structure. He confirmed that the only thing that was published was the request for a variance. He said that, as a special permit was not published, the public could have been lulled into a sense of false security that all that the Petitioner was seeking was for a one foot relief where in actuality they will be doing a lot more with this project than what the variance is seeking. Mr. Gordon said that he thought that they had both variances applied for. Mr. Levy said that there are two different standards, one is for a variance which has different criteria. He said that the Planning Board recommendation assumed that a special permit was also needed. He discussed moving forward procedurally. He said that if the Board was to grant a variance, the Petitioner would have to come back before the Board for a special permit. He said that in the past the Board has treated a special permit as a lesser included relief to a variance but due to the fact that the variance is for such a slight amount and the renovation is so substantial, it is safer to come back for a special permit. He said that will protect the Petitioner. He said that the appeal period is even longer for procedural irregularities than a finding. He said that the Board can address the variance aspect at this hearing.

Mr. Levy said that the standard under State Law and under the Zoning Bylaw is that a variance can only be granted when literal enforcement of the Zoning Bylaw would involve a substantial hardship, limited to three different categories, the soil conditions, the lot shape, or the topography. He said that the Board had not heard any evidence of wetlands or ledge. He said that this is an irregularly shaped lot that would be considered a pork chop that does not have enough frontage and is undersized. He questioned whether the lot shape was causing the hardship. Mr. Adams said that the application made clear that the motivation for putting the addition where they did was to preserve the historic arch structure. He questioned whether that could be considered part of the topography. He said that it is a site element that at least one neighbor expressed appreciation that they are trying to preserve it.

Mr. Levy said that one foot is a small amount. He asked if there had been any effort to try to pull it back a foot. Mr. Gordon said that they scaled it back a few times. He said that they originally proposed to have the addition on the right side incorporating the arch. He said that it was about 800 square feet greater than what is now proposed. He said that if they clip the proposed addition further back, it will interfere with the stairway that goes up to the second floor. He said that they would have to do a switchback stair, which would make it harder to egress the second floor.

Mr. Gordon said that the bylaw reads that the distance has to be 30 feet to the garage door. He asked if the dimension is to the actual door or can it be the casing and frame. He said that the door sits back 8 to 8.5 inches from the casing on the exterior. Mr. Levy said that the Board is dealing with what is before it and the plans show a one foot encroachment.

Ms. Battaglino submitted letters of support from neighbors on Longmeadow Road.

Mr. Adams said that the plans do not show the driveway and the paving area. He said that the plans only show the existing driveway. He asked about dealing with runoff. Mr. Gordon said that the intention is to

extend the existing driveway to meet the new construction and tear up the old part. He said that the new garage will go in front of the previous garage. He said that they will demolish the old garage. Mr. Battaglino said that there will be less blacktop because the driveway will not extend as far back to where the house is now. He said that it will be all green in front with no walkway up the middle. Mr. Adams said that the existing driveway curves around the corner of the new proposed garage. He said that the pavement will extend further towards the Kemper/Wheeler property. Ms. Battaglino said that their goal was to minimize the amount of pavement.

Mr. Adams said that, given that the Petitioner will likely be coming back before the Board to request a special permit, he asked that they provide an augmented plot plan to show the new paving and indicate what will be removed. He said that the total amount of impervious surface will probably increase, so any need for drainage control should be addressed.

Mr. Levy said that the Total Living Area plus Garage (TLAG) Affidavit that was submitted did not include a signature. He said that the Affidavit should be signed by someone who can stand behind the calculations.

Mr. Redgate the square footage in the area of requested relief. Mr. Battaglino said that it is one foot on one corner of one door. He said that the remainder of the garage doors will meet the setback requirement. He said that it is not parallel to the lot line. Mr. Levy said that the purpose of the bylaw is for a turning radius. Mr. Redgate said that if this was a 10,000 square foot neighborhood, the next door neighbor would be a lot closer and you would have to almost go onto the neighbor's property to make the turn. He said that is not the case here.

Mr. Levy said that the Board has granted a special permit in the past when it determined that the encroachment would be minimal. Mr. Adams said that the requested relief is for 12 inches. Mr. Levy said that the one foot area is in the garage door. He said that it would be a new nonconformity. Mr. Adams said that the dimension to the corner is 28.4 feet. Mr. Levy said that the current nonconformity is 8.5 feet.

Mr. Levy said that the lot is irregularly shaped but may not drive the necessity for a variance. Mr. Redgate said that the Board has looked at other houses in this neighborhood with little or no frontage.

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

Mr. Levy read the Planning Board recommendation.

Mr. Redgate said that the lot shape combined with some of the neighborhood elements with the stone arch play together. Mr. Levy said that is not legal criteria for considering a variance. He said that the Board needs to find a hardship related to the shape of the lot. Ms. Battaglino asked if the arch would be considered part of the topography. Mr. Redgate said that people sometimes refer to topography as being anything that you can see from an aerial view. He said that it typically refers to the grade.

Mr. Gordon said that it is a very unique lot. He said that they are trying to retain the existing house, which is what Wellesley has been striving for in the past 25 years. He said that no matter how they positioned the addition and tightened it up as much as possible, they were always stretched to keep the existing house intact.

Mr. Adams discussed having the Petitioner withdraw the request for a variance and reapplying for a special permit. Mr. Levy said that the request is to vary from the 30 foot rule for side entrance garages. Mr. Adams

said that they also need a special permit to alter an existing nonconforming structure. He said that the Board could consider the one foot encroachment diminimis.

Mr. Redgate asked if the plan was an accurate representation of the separation of the garage door and the edge of the garage. Mr. Gordon said that it is. Mr. Redgate asked if there is an overhang at the second level. He asked if the dimension is to the first floor. Mr. Gordon said that it is to the first floor door. Mr. Redgate said that he wanted to clarify that there is turning vehicle distance. Mr. Adams said that it is very close to what is required.

Mr. Redgate moved that the variance be granted. He said that the 30 foot dimension for a side facing garage is intended for turning movement and in this case the 1.4 foot deficit is a diminimis dimension and that literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the petitioner owing to circumstances relating to the shape of such land, which does not generally affect the zoning district in which it is located, the hardship has not been self-created, and desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

Mr. Gordon said that it will be easier to turn into the garage because that wall is not parallel to the lot line.

Mr. Adams seconded the motion. The Board voted unanimously to grant a variance.

Mr. Levy said that the Petitioner should get a TLAG Affidavit and a plot plan showing the paved area should be submitted with the application for a special permit. He asked if the intention is to have any drainage control. Mr. Gordon said that all roof runoff will be handled in a French drain. He said that there are drywells under the driveway because they are close to the water table. He said that they will set a pump to extract into the leaching system. Mr. Adams urged the Petitioner to submit information on that with the application for a special permit.

ZBA 2018-36, NEEDHAM BANK, 458 WASHINGTON STREET

There was no one present at the public hearing.

ZBA 2018-37, ST ANDREWS CHURCH, 7 DENTON ROAD

There was no present at the public hearing.

ZBA 2018-38, FR LINDEN SQUARE, 182 LINDEN STREET (CITIZENS BANK)

Presenting the case at the hearing was Samantha Burgner, representing Citizens Bank. She said that the request is for renewal of a special permit for the drive up banking service provided at 182 Linden Street. Mr. Levy said that FR Linden Square is the owner of the property. Ms. Burgner said that the owner signed the application for renewal of the special permit.

Mr. Levy said that the last permit was granted in 2012 and was granted as a two-year permit. Ms. Burgner said that there is an email on file regarding the expiration. Ms. Mahoney said that this was subject to the Permit Extension Act.

Mr. Levy asked if there have been any issues or accidents there. Ms. Burgner said that she check with the property manage and there have not been any issues.

Mr. Adams said that the original approval required a dumpster screening. He said that the Board received a letter indicating that the procedure had changed for handling waste materials. Ms. Burgner said that they have three caddies in the branch for trash that their cleaning company comes to pick up two to three times a week. She said that the caddies are approximately two feet by two feet and not more than four feet tall. She said that they are placed so that they do not obstruct emergency exits to the back of the building. She said that they are stored in a separate closet in non-customer space.

Mr. Adams asked if there ever was a dumpster. Ms. Burgner said that originally there was a dumpster that was located at the entrance of the drive up. She said that it obstructed the view of the passageway.

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

Mr. Levy read the Planning Board recommendation.

Mr. Adams moved and Mr. Redgate seconded the motion to grant renewal of the special permit, subject to the same conditions except for the condition concerning screening of the dumpster, contingent upon there being no dumpster. The Board voted unanimously to grant renewal of the special permit.

ZBA 2018-39, BROSSI BROTHERS LIMITED PARTNERSHIP, 11 PLEASANT STREET

Presenting the case at the hearing were Stanley Brooks, Esq., David and Joseph Brossi, the Petitioner.

Mr. Brooks said that the request is for a special permit/finding. He said that the proposal is to raze the pre-existing nonconforming single family dwelling and garage, both of which are located on a pre-existing nonconforming lot. He said that the property is located in a General Residence 10 District. He said that the lot is 9,974 square feet, which is 26 square feet short. He said that the proposal is to construct a single family dwelling that will be fully compliant except for lot area. He said that it will meet all setbacks, height, and lot coverage requirements of the bylaw. He said that they went through the Demolition Delay process and the Historical Commission found the house to be preferentially preserved. He said that they submitted a waiver application which was approved after extensive review.

Mr. Brooks said that there have been a couple of minor changes between the plans that were filed with the application and the approved plans from the Historical Commission. He said that the bulkhead was originally at the rear of the house. He said that a couple of square feet of the bulkhead encroached into the rear yard setback. He said that the Building Inspector has determined that any encroachment means that the entire bulkhead encroaches. He said that the bulkhead was moved to the left side of the house, within the setback envelope.

Mr. Levy asked which plan that Board is being asked to approve. Mr. Brooks said that the plan was dated March 26, 2018 and was signed on April 5, 2018. He said that they submitted a request to the Planning Director in March, in accordance with Article 46C, that he find that change and moving an internal wall in the garage four inches and not affecting the exterior was not substantial enough to require the Petitioner to go back to the Historical Commission. He said that the Planning Director indicated that he would find them to be insubstantial, based on the authority granted to him under Article 46C but because the waiver agreement

has not been signed yet, he would not do so before demolition. Mr. Levy said that matter is not before this Board.

Mr. Brooks said that the existing structure encroaches in the front yard. He said that the garage encroaches into the side yard and the rear yard. He said that the proposed house will fit entirely within the setback envelope.

Mr. Brooks said that the proposed house went through extensive review and modifications. He said that they went back before the Historical Commission four times to ensure that it complies with their determination of the neighborhood character and that the proposed house would be consistent with the character of the neighborhood, and incorporates architectural features that are in the neighborhood. He said that they found it to be consistent and bears a true relationship to all of the surrounding houses. He said that they made a determination that this proposed structure, from an architectural perspective, fits in the neighborhood. He said that the hope is that this Board will find that, but for the lack of 26 square feet and the fact that they will be eliminating all of the nonconformities except for the lot area, which they did try to acquire, it will not be substantially more detrimental to the neighborhood than the existing structure.

Mr. Levy asked if there was a Total Living Area plus Garage (TLAG) calculation done for this. He said that this is exempt from Large House Review (LHR) but the Board does like to get an idea of where it would fit in vis a vis LHR. Mr. Brooks said that he did not have the calculation with him. He said that the house will be well within the setbacks with 28 feet from the left side line and 32 feet from the right side line. He said that it will be 31.6 feet in height. He said that the size of the house was reviewed in depth with the Historical Commission and they found it to be not overly large for the neighborhood. He said that lot coverage will be 22.7 percent, which is under the 25 percent that is allowed. He said that the footprint will be 2,269 square feet, including the garage, the front porch and the bulkhead. He said that it will be a two-story structure of approximately 4,500 square feet. Mr. Levy said that TLAG for this district is 3,600 square feet. He said that if the TLAG is going to be more than 3,600 square feet, he would like to see the computation.

Mr. Adams asked if this will be truss construction for the roof. He said that no access is shown to the attic but it would not take much to put a stairway there. He said that there appears to be enough head room in the attic for habitable space. Mr. Brossi said that if you look at the ceilings in some of the rooms, you can see that there is not really much room for living space in the attic.

Mr. Brooks said that if you take about the bulkhead and the front porch, the house will be approximately 2,000 square feet, including the garage. He said that at rear of garage is a family room with a cathedral ceiling. He said that there is only one floor of living area in that section.

Mr. Levy asked if the Petitioner would accept a condition that an Affidavit be submitted indicating that the TLAG will be less than 3,600 square feet.

Mr. Redgate said that the Board does not have a good sense of the size of the structure. Mr. Levy said that this is an undersized lot. Mr. Brooks said that the front yard setback violation will be eliminated.

Mr. Adams asked if the Petitioner had share the plans with the neighbors. He asked if any of the neighbors attended the meetings with the Historical Commission. Mr. Brossi said that they spoke with the neighbors at various times and they were in favor of the existing structure coming down and having a new house built. He said that they spoke with abutters about acquiring 26 square feet of land, so they are well aware of what

has been going on. He said that they sent them an email and invited them to come to the office to look at the plans. He said that there were no objections from any of the abutters.

Mr. Redgate said that the Board has seen this property before as a two-family.

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

Mr. Levy read the Planning Board recommendation.

Mr. Levy said that the consensus of the Board is that it would like to know what the TLAG calculation is unless the Petitioner is willing to accept the condition that the TLAG will be under 3,600 square feet. Mr. Brooks asked that the Board continue the petition so that the TLAG Affidavit can be submitted. Mr. Levy said that the Board will adjourn the hearing to allow Mr. Brooks time to go to his office to get the TLAG Affidavit.

The hearing was adjourned at 9:07 pm.

ZBA 2018-41, CHARLES & BETH DUBLIN, 15 COLGATE ROAD

Presenting the case at the hearing were Charles Dublin, the Petitioner, and Jacob Gadbois, Builder.

Mr. Levy asked the Petitioner to address the hardship associated with the variance request. He said that shape of the lot and topography are not issues here. Mr. Redgate discussed the three criteria for granting a variance.

Mr. Gadbois said that a five foot porch would not be usable. He said that eight feet is ideal but a six foot porch would be usable.

Mr. Levy said that historically this Board grants few variances. He said that the Board does not have the authority to grant a variance without making a finding in accordance with the bylaw. He said that the Planning Board recommended that the petition be denied.

The Board discussed allowing the petition to be withdrawn without prejudice. Mr. Dublin requested that the petition be allowed to be withdrawn without prejudice.

There was no one present at the public hearing who wished to speak to the petition.

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

ZBA 2018-40, 42 BAY STATE ROAD

Presenting the case at the hearing were David Himmelberger, Esq., Keri Murray, Architect, Megan and David Boffa, the Petitioner.

Mr. Himmelberger said that the request is for a special permit/finding. He said that he was not initially involved in the submittal of the application. He said that questions were raised after it had been submitted with regard to the plot plan and the deed and the extent to which there was a road or right of way that went

through the property. He said that he did not think that it changes things significantly. He said that the Applicant is seeking a special permit to put on a 14 foot by 18 foot two-story addition to a pre-existing nonconforming structure. He said that the lot size is pre-existing nonconforming and is shown on the plot plan as 10,605 square feet in a SR 15 District. He said that it has a rear setback of 6.9 feet, a front yard setback of 28.9 feet, and a left side yard setback of 15, all of which will remain and are unchanged.

Mr. Himmelberger said that the deed to his clients referenced earlier deed that in turn referenced an earlier deed from 1942 that showed the lot at 10,605 square feet, subject only to a 45 foot right of way upon which people were able to pass and repass, that was at some point known as "Pineway". He said that in 1942 there was fee ownership of 10,605 square feet. He said that in 1952 the town took a portion of the property for the construction of Bay State Road. He said that when the town took this portion of the property, as shown on a plan, it took an area of 3,218 square feet, which differs from the original right of way that was owned in fee. He said that, as of 1952 with this taking, the lot was reduced by 3,218 square feet to 7,387 square feet, still remaining nonconforming.

Mr. Himmelberger said that the plot plan that was submitted shows the original size of the lot at 10,605 square feet. He said that, in fairness to the Surveyor, while the taking has a narrative and an instrument was recorded at the Registry, there was no plan of record. He said that the taking plan that Mr. Himmelberger distributed to the Board was never recorded at the Registry of Deeds but was accepted by the town. He said that the physical taking was recorded, the narrative with the metes and bounds but not the plan. Mr. Levy asked if the narrative referenced the plan. Mr. Himmelberger said that it did not.

Mr. Himmelberger said that another unusual aspect that contributed to the error in the deed was the fact that ownership of the property continued within the same family from 1942 until 2001, at which time the first deed out since 1952 incorrectly referenced the 1942 deed description.

Mr. Himmelberger said that this is a 7,387 square foot lot in a 15,000 square foot Single Residence District. He said that, whereas the footprint of the proposed addition of 252 square feet remains the same, the percentage of lot coverage changes. He said that when the lot was understood to be 10,605 square feet, lot coverage of 11 percent increase would increase to 14 percent. He said that when the correct size of the lot is applied, the actual lot coverage of 15.8 percent will increase to 20 percent, which is well below the 25 percent limit for homes on lots with less than 10,000 square feet. He asked that the Board consider the application tonight with a condition that a corrected plot plan. He said that the plot plan that was originally submitted does show the correct front yard setback of 28.9 feet to the edge of the taking for Bay State Road. He said that what was taken for Bay State Road does not have any implication with regard to the proposed addition to the left rear of the house.

Mr. Himmelberger said that the Planning Board, in recommending approval, felt that the scale and design of the addition would allow it to integrate seamlessly with the existing structure and reasonably well with other dwellings in the neighborhood. He said that this is a beautiful home and the Applicants are to be commended for retaining it and not seeking to start fresh. He said that they are seeking to add this modest 252 square foot addition over two floors with a basement.

Mr. Levy said that the Planning Board recommended approval when they were under the understanding that it was a larger lot than it is.

Mr. Levy said that it appears that the homeowner may be encroaching into the right of way. Mr. Himmelberger said that it is not dissimilar from virtually every other home in Wellesley in which the pavement ends shy of the right of way.

Mr. Adams asked about the width of the taking. Mr. Himmelberger said that it is 40 feet, which is typical. Mr. Redgate asked if the house across the street was existing at the time of the taking. Mr. Himmelberger said that it was. He said that they gave some land as well. He said that on the bottom of the plot plan that was provided shows a dotted line beneath the bottom edge of Bay State Road. He said that was the extent of the 40 foot right of way that had previously been established through the deed back in 1926 for the Pineway, which was owned in fee. He said that when the new 40 foot Bay State Road taking was made, a portion of it was off the property. He said that Bay State Road is off of the original property. He said that Julian was the owner during the taking.

Mr. Redgate said that the dimensional table on the plot plan should be adjusted.

Mr. Levy said that the proposed building height is listed as, "to be determined." Mr. Himmelberger said that it will be less than the existing, which is 28.9 feet. He said that they will provide that calculation, as well as the lot coverage expressed in square feet.

Mr. Levy asked if a TLAG calculation was done. Mr. Himmelberger said that it was not done. He said that the Petitioner is willing to accept a condition that TLAG calculations be submitted. He said that the Town lists the Total Living Area (TLA) as 1,936 square feet and the addition is 504 square feet. He said that it will be well under 3,600 square feet. He said that they will supply the TLAG calculation.

Ms. Murray said that she was hired to put an addition on this beautiful Tudor style home. She said that the goal to maintain the original character of the house and preserve as much of it as possible. She said that the program spaces that they were interested in expanding or better utilizing were situated on that where there was more room to put an addition. She said that there is 38 feet to the property line. She said that they tried to make it as small and modest as possible but still satisfy the needs of the client. She said that it is a three-bedroom house. She said that they were looking to create a larger bedroom on the second floor for a master type dwelling space. She said that the existing kitchen on the first floor is the smallest room in the house. She said that her clients wanted an opportunity to expand that living space. She said that they designed the addition to look like it has always been there. She said that they maintained a similar style on the dormers. She said that the new ridge line will not exceed that of the existing house. She said that it will relate to the other side of the house with a slate roof, brick siding and matching windows. She said that there are one or two copper roof canopies on the back that they will replicate. She said they were looking to enhance the overall aesthetic of the house while maintaining a modest footprint.

Mr. Adams said that he and his wife walk Bay State Road and have become familiar with this home. He said that they are fortunate to have the perfect place to put the addition. He said that it should not have any negative impact on the neighbors. He said that the addition will be consistent with the masonry that is there now and appears to be nicely done.

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

Mr. Levy read the Planning Board recommendation.

The Board discussed the existing nonconformities.

Mr. Adams asked about the driveway. Ms. Murray said that it will stay the same. Ms. Boffa said that they took the driveway up a couple of years ago and put in grass.

Mr. Redgate asked about the brick structure at 25 Pine Street. Ms. Boffa said that is a garage. Mr. Himmelberger said that the McKinney's were supportive of the plans.

Lou Titus, 32 Bay State Road, said that he is the abutter to the left side. He said that he likes the layout. He said that the Boffa's are great neighbors. He said that previously in the hearing he heard a comment about a special permit not being allowed for nonconforming lots. Mr. Levy said that pre-existing, meaning pre-existing the enactment of the Zoning Bylaw, nonconforming, meaning it does not comply with the current bylaw, structures, in order to alter or amend them need a special permit from this Board. He said that the standard of review is whether the proposed renovation is substantially more detrimental to the neighborhood than the current nonconformity. He said that is the standard that this property is under today. He said that a variance means it is looking to vary the terms of the bylaw or create a new nonconformity. He said that is a totally different legal standard. Mr. Titus said that it is good that the Boffa's will meet all of the criteria.

Mr. Redgate moved and Mr. Adams seconded the motion that the Board approve a special permit and make a finding that the proposed construction shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, subject to conditions that a new plot plan be submitted, any dimensional corrections be submitted, that the revised plot plan that lot coverage is under maximum allowed, that the revised plot plan be signed by a land surveyor, that the plot plan indicate the proposed building height on its chart, that the plot plan show the taking and indicate where it is on the plan, and submittal of a TLAG Affidavit that indicates that the total dimension is less than what is required in a 15,000 square foot Single Residence District. The Board voted unanimously to approve a special permit.

Mr. Levy said that he wanted to address the petitions at 458 Washington Street and 7 Denton Road. He said that he did have some comments about Washington Street in that there was a requirement that the arrows be painted. He said that he drove by there tonight and they are faded. He said that he did not see any issues with Denton Road. He asked the other Board members if they had any objections to considering Denton Road without the Applicant being present at the hearing. Mr. Adams said that he did not have a problem with approving Denton Road. Mr. Redgate said that he could go either way. He said that he would prefer that the Applicant be at the hearing. Mr. Levy said that the only question would be if there have been any issues. Mr. Adams said that the decision says that it is used to house clergy or rented as a single family dwelling. Mr. Levy read the conditions. He said that he was prepared to vote on it. He said that he would like to see the applicant for Washington Street because they have not complied with their previous conditions.

Mr. Adams moved and Mr. Redgate seconded the motion to approve renewal of the special permit for 7 Denton Road, subject to the same conditions. The Board voted unanimously to grant renewal of the special permit.

Mr. Levy said that the hearing for Needham Bank should be continued because it was not opened and any panel can hear it. He said that the Applicant should be told to have the pavement markings re-stripped before coming back before the Board. Mr. Adams moved and Mr. Redgate seconded the motion to continue the hearing to July 12, 2018. The Board voted unanimously to continue the hearing.

ZBA 2018-39, BROSSI BROTHERS PARTNERSHIP, 11 PLEASANT STREET

The hearing was reopened at 9:50 pm.

Mr. Brooks said that TLAG will be 3,789 square feet, based on the Architect's numbers. He said that even at 4,000 square feet or more, this house will fit easily into the neighborhood. He said that the house directly across the street at 10 - 12 Pleasant Street is a very large three-story two-unit condominiums, each with 3,000 square feet. He said that there is a two-unit condominium at 17 - 19 Pleasant Street, an 11-unit condominium at 26 to 34 Pleasant Street, and a two-family going in at 21 Pleasant Street. He said that there is a lot of big stuff up there and there is a lot of density. He said that the Historical Commission spent a lot of time talking about the eco system in the neighborhood. He said that was part of the driving force that they used and adopted by the Applicant on the plans that were submitted to this Board. He said that they went through four meetings with them to revise the plans until it was at a size and a fit with the neighborhood that they were comfortable with and what they believed would become an integral part of the eco system.

Mr. Brossi said that there has been a lot of time and money spent on these plans.

Mr. Adams said that there are many variables here. He said that the Board does not have a decision from the Historical Commission. Mr. Brooks said that the Historical Commission said that they granted the waiver and the delay period was reduced, with conditions. He said that all of the modifications were done. He said that the plans before this Board are the elevations and foundations that were approved under the waiver. He said that the floor plans were not required for that approval. He said that other conditions concern notifying the Planning Director when they file for a Building Permit, sign a waiver agreement, etc. He said that the conditions are not for the actual construction.

Mr. Levy said that this Board typically likes to be the Board of last resort. He said that the Board will not be making any finding or giving any relief from the Historic bylaw.

Mr. Adams said that TLAG is about five percent over the threshold. He said that if the Board does approve this, there will be a condition that there be no habitable space in the attic. Mr. Brossi said that, if anything, there will be a pull down. He said that there will be a furnace in the attic doing a top down feed but there are no plans to do construction up there. He said that a condition for no habitable space in the attic is acceptable. Mr. Brossi said that they could not add windows up there because of the design. Mr. Brooks said that they spent a lot of time on the pitch of the roof. He said that it kept coming down after review by the Historical Commission. Mr. Brossi said that they have to keep the outside the way that the Historical Commission approved. Mr. Brooks said that the elevations cannot change. He said that the Planning Director has to sign off before a Certificate of Occupancy. Mr. Levy said that a concern is ten years down the road. He said that the Board will insert a condition so that any potential buyer would see that.

Mr. Levy said that one of the Board members looks at total living area information from the Assessor's Office. Mr. Brooks said that the condominiums across the street at 10 to 12 Pleasant Street are both 3,000 square feet, so it is a 6,000 square foot building that looks like a single house. He said that there were two properties on Pleasant that were recently before this Board for additions. He said that at Westerly Road the houses are a little smaller and they increase as you go up the street. He said that this will not overpower the streetscape or the abutting houses. He said that the house next door at 15 Pleasant Street is set back 32 feet from the lot line and this house will be set back 28 feet, so there will be a lot of space between them. He said that there is a lot of separation to the rear at Oak Street. Mr. Adams said that it appears that quite a few of the houses in the neighborhood are the same size as what is being torn down. Mr. Brooks said that it is an eclectic neighborhood. He said that there is everything there from single family houses to the 11 unit

condominium complex. He said that in ZBA 2015-35, the Board granted Site Plan Approval for a six unit condominium 22 and 24 Pleasant Street. He said that there is a lot of large, dense construction in the neighborhood. He said that it was exasperating to work with the Historical Commission to make sure that this house was consistent with the eco system, which ran from Westerly Road up to where the houses started to get bigger. He said that they made the determination that this house at this size and design fits in with the neighborhood. He said that they looked at all of the other properties and brought in architectural details that are similar.

Mr. Levy said that the Demolition Delay bylaw is relatively new. Mr. Brooks said that they will be eliminating every nonconformity that can be eliminated. He said that they will not create any new nonconformities and the proposed structure will not be more detrimental to the neighborhood than the existing nonconformities. He said that it will be a crisp new dwelling that will enhance the other properties in the neighborhood.

Mr. Levy said that this is exempt from Large House Review (LHR). He said that the Board likes to look at TLAG to get an idea of what Town Meeting's view is a large house. Mr. Redgate said that the Board sometimes requests that information similar to LHR be submitted. He said that the engineering drainage plan is well developed, much more developed than what the Board typically sees, and probably to a LHR level.

Mr. Adams asked about the height of the building. He said that he did not see it on the plans. Mr. Brooks said that the height will be 31.6 feet. He said that the proposed grade is shown on the proposed site plan as 158.7. He said that the proposed ridge will be at 192.5, which is 33.8 feet high. Mr. Adams said that it is nice to have the height where you do not have to do the math. He said that way the Building Inspector can make sure that the roof pitch does not change and end up being taller. Mr. Brooks said that what is shown in the redesigned roof to fit the eco system. Mr. Levy said that it is the average grade of the current structure. He said that the Board will not be granting any relief from the height. He said that the Board will not be granting any relief for the retaining walls.

There was no one present at the public hearing who wished to speak to the petition.

Mr. Levy said that the application referenced 2017 permits. Mr. Brooks said that a request for a variance was withdrawn without prejudice.

Mr. Redgate said that he would typically like to see more information that mirrors or comes closer to what the Planning Board requires for LHR. He said that this will be within 150 square feet of the threshold. He said that the engineering plan was well developed and is most likely to LHR level. He moved and Mr. Adams seconded the motion to approve a special permit and make a finding that the proposed structure shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, subject to the conditions that a TLAG Affidavit be submitted that has been signed, and that a revised plot plan be submitted that identifies the maximum height of the building. Mr. Levy said that the TLAG Affidavit shall conclude that it is less than 3,790 square feet. Mr. Adams said that there should be a chart on the plot plan that extrapolates the height information. He said that there shall be no habitable space in the attic. Mr. Levy said that the Board is making no findings or relief on the retaining walls. The Board voted unanimously to grant a special permit.

As there was no further business to come before the Board, the hearing was adjourned at 10:15 pm.

Respectfully submitted,

Lenore R. Mahoney
Executive Secretary

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