

**ZONING BOARD OF APPEALS**

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

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February 7, 2019
7:15 pm
Juliani Meeting Room
Town Hall

Zoning Board of Appeals Members Present: J. Randolph Becker, Chairman
Richard L. Seegel
Derek B. Redgate

BUSINESS MEETING**ZBA 2018-48, HI NEIGHBOR LLC, 576-590 WASHINGTON STREET**

Present at the meeting Christopher Petrini, Esq., who said that he is a resident of the Belclare Condominiums, which is located adjacent to the Applicant who is before the Board. Also present was Melissa Ferris, representing Hi Neighbor LLC.

Mr. Petrini said that the Board issued a decision in July of 2018 that allowed for a number of signs. He said that one of the aspects of the signage was the placement of a sign nine inches higher than what is allowed in the Zoning Bylaw and without the required setbacks on Washington Street. He said that, based on recommendations from the Design Review Board (DRB), the sign was placed close to the condominium entrance. He said that after the sign was placed, a lot of the residents were upset because they thought that it could create confusion since it was so close to the condominium. He said that the request is that the Board make a determination that moving the sign 25 feet north and further away from the condominium entrance is a minor change. He said that the sign will still be in the courtyard, in the same general vicinity. He said that Hi Neighbor supports this change and there is 100 percent support from the condominium owners. He said that there will be no further or negative impact on Washington Street.

Mr. Becker said that the action that is before the Board is whether the proposed change is a minor modification and does not require a public hearing.

Mr. Becker said that the Board had talked about the location of the sign at the original hearing. He said that the reason it was located there was because the Applicant concurred with the DRB. Mr. Petrini said that when the sign was actually installed, it created a potential for confusion. He said that the Applicant and the neighbors are supportive of the relocation.

Mr. Redgate moved, Mr. Seegel seconded the motion, and the Board voted unanimously to make a determination that the proposed change is a minor modification that does not required a public hearing.

ZBA 2018-58, STEPHANIE ANDERSON, 24 AVON ROAD

Present at the meeting was David Himmelberger, Esq., representing the homeowner at 24 Avon Road, who was before the Board for a special permit for reconstruction of the house. He said that the Board conditioned its approval upon submittal of an engineering site plan, including a drainage system, that was stamped by an engineer and approved by the Town Engineer. He said that the plan had to show that there will be no increased runoff from the site and the revised plot plan confirm that the side facing garage was not located closer than 30 feet to the side lot line nor that ac units were located in any setbacks. He said that those plans were submitted. He said that during the discussion with the Town engineer, it became necessary to relocate the drainage system to an area to the rear of the house, causing the side stairs to need to be relocated. He said that as originally designed, the stairs ran along the right rear of the house. He said that, as a consequence of the relocation of the drainage system, it was necessary to bring the stairs down to a small landing and turn them 90 degrees and run them to the right side. He said that the ac units are still outside of the setback on the other side of the stairs. He said that they are seeking a determination that the modification is minor to the special permit.

Mr. Seegel confirmed that there are trees at the rear.

Mr. Seegel asked if the plan was approved by the Town Engineer. Mr. Himmelberger said that it was. He said that the plan that was submitted in conjunction with satisfying the Town Engineer addressed that. He said that he was willing to accept a condition that the revised site plan is satisfactory to the Town Engineer. He said that they were focused on the drainage, which is satisfactory to them.

Mr. Redgate moved, Mr. Seegel seconded the motion, and the Board voted unanimously to make a determination that the proposed change is a minor modification that does not require a public hearing, subject to a condition that a letter from the Town Engineer be submitted regarding approval, in accordance with the prior condition in the decision.

ZBA 2019-06, ANNE BAE, 36 BROOK STREET

Presenting the case at the hearing was Anne Bae, the Petitioner. Also present were David Bae and Elizabeth Mehta. Ms. Bae said that the request is for renewal of a special permit that was granted in 2017 to use the home as a two-family. She said that the home has 11 bedrooms and 5.5 bathrooms, which is too much space for one family.

Mr. Seegel confirmed that Ms. Bae's daughter lives there. Ms. Bae said that her daughter lives there with her husband and baby.

Mr. Seegel asked Ms. Bae if she is aware that if there is no member of the family living there, the permit ceases to exist. Ms. Bae said that she has the house in trust and her daughter is one of the trustees. Mr. Seegel said that the special permit will cease if there is no family member living there because it goes back to a pre-existing nonconforming use that pre-dates the Zoning Bylaw. Ms. Bae said that she understands that the property is located in a single family zone.

Mr. Becker said that the hearing was continued because the Board had not received a report from the Building Inspector report. He said that the Board has since received that report and the Building Inspector confirmed that the property contains two dwelling units, in accordance with the conditions of the 2017 special permit.

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

Mr. Seegel moved, Mr. Redgate seconded the motion, and the Board voted unanimously to approve renewal of the special permit, subject with the same conditions as set forth in the prior permit.

ZBA 2019-16 WELLESLEY COLLEGE 91 DOVER ROAD

Presenting the case at the hearing were Justin Mosca, PE, VHB and Chris Ridge, representing Wellesley College, the Petitioner.

Mr. Mosca said that the College has a shed that they installed at the Nehoiden Golf Club and they would like to convert a portion of that shed to a starter shed with a desk, candy and small sales. He said that the Building Inspector said that making that change would make it a public space that requires handicapped accessibility and other features that you would see in a building permit. He said that it is a Reed's Ferry shed that was pre-manufactured. He said that there is a requirement in the Zoning Bylaw for approval for a use that is customarily associated with a club. He said that the request is for a special permit to use the shed as a starter shed. He said that there will be some associated site work. He said that there are no official setbacks but the Building Inspector looked at other uses in the area and historically what the setback would have been. He said that the Building Inspector determined that the setback should be 20 feet. He said that they will move the shed to meet the setback requirement. He said that Wellesley College went before the Design Review Board (DRB) and they had some minor modifications for putting lattice around the bottom to block the brick. He said that it is very difficult to see the shed from Dover Road but technically it is visible.

Mr. Becker said that the first question that came to his mind was why this was not by right. He said that Section VII of the Zoning Bylaw talks about permitted uses. He read an excerpt from Section VII. Mr. Redgate said that the Building Inspector was looking at the use in a public space.

Mr. Redgate confirmed that the shed is currently in the setback. He asked if the Petitioner would supplement the submitted plan with a plan that shows the overall property line and the proposed location of the shed. He asked that the plan define the property lines of the entire site. He confirmed that the property on the other side of the property line is MWRA property.

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

Mr. Becker read the Planning Board recommendation.

Mr. Redgate moved, Mr. Seegel seconded the motion, and the Board voted unanimously that the proposed use meets the conditions of Special Use Permits Standards in Section XXV of the Zoning Bylaw and that a special permit be approved, subject to the condition that an overall survey plan with the setback be submitted.

2019-17 AMIR KRIPPER & CARIN LITANI, 28 CRESCENT STREET

Presenting the case at the hearing were Amir Kripper and Carin Litani, the Petitioner. Mr. Kripper said that he and his wife are the owners of 28 Crescent Street, where there is an existing farmhouse that was built in 1875. He said that the existing garage was built in the 1980's. He said that in the 1990's, an architect proposed a second story on the garage that was approved but not built. He said that the request is to build a new garage with a second story and connect it to the house.

Mr. Becker said that the rear yard setback is nonconforming. Mr. Kripper said that the proposal is to keep the same setback and add a story to the garage.

Mr. Seegel asked if the property backs up to the Aqueduct. Mr. Kripper said that it does. He said that there is a Cross Town Trail there.

Mr. Redgate asked if the second story will be connected to the house as well. Mr. Kripper said that it will be. He said that is where the master bedroom will be located. He said that currently there is a passage between the garage and the kitchen.

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

Mr. Becker read the Planning Board recommendation. He said that the Planning Board recommended that there be more architectural articulation on the rear elevation. Mr. Kripper said that they may add a window in the walk in closet on the back of the house. He said that there will be a frosted window in the bathroom and they will match it.

Mr. Redgate confirmed that there is a basement associated with the garage structure. Mr. Kripper said that the basement will be new. Mr. Redgate confirmed that the existing garage will be completely razed. Mr. Kripper said that it was built with cinder blocks and is already falling apart. Mr. Redgate confirmed that the footprint of the house will be expanded only to make the connection.

Mr. Seegel asked about windows in the rear. Mr. Kripper said that there are windows in the bathroom and the connection. He said that they discussed adding another set of windows at the end in the walk in closet.

Mr. Redgate asked what part of the footprint will be new versus existing. Mr. Kripper submitted a large site plan. He displayed the location of the new footprint on the plan. The plan was entered into the record.

Mr. Seegel moved, Mr. Redgate seconded the motion, and the Board voted unanimously to grant approval of a special permit for demolition of the existing garage and construction of a new structure, as shown on the plans that were submitted to the Board.

ZBA 2019-19 SHANI KUMARASENA, 30 YARMOUTH ROAD

Presenting the case at the hearing was Shani Kumarasena, the Petitioner.

Mr. Becker asked if there have been any changes since the last renewal of the special permit. Dr. Kumarasena said that there have been no changes. She said that she sees no more than two patients per week. She said that the use is just for convenience of her patients on a day that she cannot go out.

Mr. Becker asked how times Dr. Kumarasena saw patients on Sunday. Dr. Kumarasena said that she could not quite remember but probably not. She said that during the week she is in the office. She said that it is on the weekend or holidays when she might need to use her home. She said that the practice is within her house and there is no traffic. She said that they have enough parking and there is no disruption to the neighborhood.

Mr. Redgate said that the special permit was renewed in 2012 for three years. The Executive Secretary said that the special permit was subject to the Permit Extension Act.

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

Mr. Becker said that the Board received an email from Stella Chan-Flynn, 4 Falmouth Road, in which she expressed her strong opposition to the special permit. Mr. Redgate said that the house is not next door or across the street.

Mr. Becker read the Planning Board recommendation.

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

ZBA 2019-18, FARDAD FARAHMAND, 183 WALNUT STREET

At the request of the Petitioner, the hearing was continued to March 7, 2019.

ZBA 2019-20, JOAN & JEFFREY TALMADGE, 30 MAYO ROAD

At the request of the Petitioner, the hearing was continued to March 7, 2019.

ZBA 2019-26, JODI & BRADLEY PROSEK, 17 ATWOOD STREET

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

ZBA 2019-23, FR LINDEN SQUARE, INC., 185 LINDEN STREET

Presenting the case at the hearing was Eric Gunn, CBRE, facility partners with Bank of America, tenant at 185 Linden Street. He said that the request is for renewal of a special permit. Mr. Seegel said that the special permit should be renewed for a term of three years instead of two years.

Mr. Becker said that some of the turns to get into the lanes are challenging. He asked if there have been any issues since the last renewal of the special permit. Mr. Gunn said that when that was first redone, they did notice some issues and shaved back some of the curbing as far as they could. He said that they had discussions with the landlord but they were not able to get the landscaping and curbing as simple as they would like it. He said that it can be a little more challenging for certain vehicles.

Mr. Becker asked if most people turn left when exiting. Mr. Gunn said that a few people turn right but most follow the correct path. He said that over time people have gotten used to the proper way to do it.

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

Mr. Becker read the Planning Board recommendation.

Mr. Seegel moved, Mr. Redgate seconded the motion, and the Board voted unanimously to approval renewal of the special permit, subject to the same conditions except that the permit shall expire in three years.

ZBA 2019-24, SUSAN & DEREK WEYCKER, 14 AVON ROAD

Presenting the case at the hearing were Susan Weycker, the Petitioner, and Tim Burke, Architect.

Mr. Burke said that the Board previously granted approval for a small addition on the side of the house. He said that as they got into construction, they realized that the original location chosen for the ac units would not work. He said that the request is for approval to locate two condensers beyond the side of the porch. He said that they looked at all of the alternatives and found that there are not many options, given this particular property. He said that they spoke with the immediate abutters on the side where the condensers would be located and they gave a letter of support stating that they would not have a problem with this proposal.

Mr. Seegel asked if there is a patio at the back. Mr. Burke said that the site drops off steeply. He said that there is a set of stone stairs that lead down to the patio.

Mr. Seegel questioned why the condensers could not be put next to the house. Mr. Burke said that there would not be enough air clearance there for the units to function properly. He said that it is a small area where they could possibly fit one but not two units. Ms. Weycker said that it goes on an angle. She said that it is not square but is more of a crescent shape. She said that an ac unit would be hanging by the edge.

Mr. Seegel said that a topographical map was not submitted. Mr. Becker said that you can see the retaining wall and stairs on Plan A1.0 that gives you some sense of the difference in elevation.

Mr. Becker said that, what looks like the photograph of a nameplate on an ac unit was submitted. He said that Trane XR 11 has been discontinued. He confirmed that it is an existing unit. Ms. Weycker said that they would like to move the unit two feet forward. Mr. Burke said that it is currently located where the new addition will go.

Mr. Seegel asked if it would be possible to slide the units under the top landing. Mr. Burke said that was what they had originally hope to do but the installer said that there would not be enough air circulation and the units would burn out. Mr. Seegel asked if a solution would be to purchase new units that would function under the landing. Mr. Burke said that it is the same principle for ac units and the amount of air flow that is required.

Mr. Redgate confirmed that the condensers will be located in the patio area. Mr. Burke said that furniture there will help to screen the units. Mr. Becker said that the narrative talked about a privacy fence around the condensers but he did not see anything on the plan that he could identify as a privacy screen. Mr. Burke said that they can install a privacy screen that aligns with the top of the stair and returns back to the building.

Mr. Redgate confirmed that the previous approval was for a special permit and the current request is for a variance.

Mr. Becker said that the Board is always challenged by the way the bylaw is written. He said that topography, soil condition and shape of the lot does not work well with mechanical equipment.

Mr. Seegel said that the proposed plan does not show the wall or stairs. Mr. Burke said that they are show on Plan A1.0. He said that the surveyor did not put them on the plot plan.

Mr. Becker read an excerpt from Section XXIV of the Zoning Bylaw regarding Variances. He said that the Board struggles with applying the bylaw to air conditioners because they are not really structures, so things like shape and soil conditions do not generally impact them the same way that an addition would be impacted. Mr. Seegel said that another part of the State Law is that the hardship has not been self-created. He questioned whether the Board has the power to grant this, under the circumstances. Mr. Becker said that the Petitioner selected that particular location and that is the reason that they need the variance. He said that there was a similar case on River Ridge Road on a tiny lot where there was no place on the lot where they could put an ac condenser that was not in the setback. He said that was a case where the hardship was not self-created.

Mr. Seegel said that the house maxes out the setbacks. He asked if it would be possible to put the ac units under the deck at the front of the house. He questioned whether this property qualifies for a variance. Mr. Burke said that the plan was to put the condensers under the deck but they were told that they cannot do that.

Mr. Redgate asked about the proximity to the interior HVAC system. Ms. Weycker said that the ac units were located there when they first moved in. She said that they thought that they could go under the porch. She said that they went to Needham Mechanical and someone came out to the property, looked at it and said that there would not be enough circulation if the units were put under the decks, even though the areas are

deep because of the topography. She said that they were told that the units would burn out if they were in an enclosed area.

Ms. Weycker said that there is insufficient setback on the other side of the house and it is on the driveway side. Mr. Redgate asked about moving the units towards the rear behind the new addition. Mr. Burke said that is where the stone stairs are. Mr. Becker said that, when looking at the plot plan, the logical place would be behind the new addition.

Ms. Weycker said that the back yard drops. She said that there are stone retaining walls. Mr. Redgate said that there may be topography issues from the stairs to the back wall of the residence.

Ms. Weycker said that even if they got smaller ac units, they would still not meet the setback requirements.

Mr. Seegel discussed allowing the Petition to be withdrawn without prejudice. He said that the Petitioner could come back with a survey that shows two foot contours on the property to show that the topography makes it impossible to put the ac condensers anywhere else.

Mr. Redgate said that even lot shape implies a funky shape, this is an extra small lot at 8,000 square feet, which eliminates options. Mr. Seegel said that the lot is only 80 feet wide.

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

Mr. Becker read the Planning Board recommendation.

Mr. Burke asked that the Board allow the petition to be withdrawn without prejudice.

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

ZBA 2019-25 NANCY A. ALEVIZOS TRUST, 9 PICKEREL ROAD

Presenting the case at the hearing was John Sullivan, representing Nancy Alevizos, the Petitioner. He said that the request is to put a second floor on the existing structure. He said that his only setback is in the front where the house is encroaching.

Mr. Seegel asked if the request is to add a new second floor. Mr. Sullivan said that they would like to add a second floor to an existing cape.

Mr. Becker asked about the TLAG calculation. Mr. Sullivan said that the total living area is 2,200 square feet total. Mr. Seegel said that they will be doubling the size of the house and adding a piece. He said that the Board would need to see what the TLAG will be. Mr. Becker said that plans show living area at 1,100 square feet and 1,194 square feet, for a total of 2,294 square feet, which would not trigger Large House Review but it might based on the percentage increase. He said that he did not see any dimensions on the proposed landing. He said that when he looked at the elevations and the floor plans, the door was not in the same place. He said that the elevation has the door consistent with the site plan but if you look at the floor plan, there is no door there. He said that the floor plan does not agree with the site plan and the elevation.

Mr. Becker said that the landscaping at the back is outside of the property line. Mr. Sullivan said that they went before the Wetlands Protection Committee (WPC). He said that WPC found that the fence is on their property. He said that they went back before the WPC, who required them to put plantings in and take the fence out. He said that whoever did the job done in 1992 put the fence up. Mr. Seegel said that the Board

should have a copy of the Order of Conditions. Mr. Becker confirmed that the reason that the trees are shown are because the WPC asked for them.

Mr. Seegel asked how far back from the water is the house. He said that it is within 200 feet, perhaps within 100 feet. Mr. Sullivan said that they will not be putting a shovel in the ground. He said that he went before the WPC because he will be going up on the roof and he was concerned about debris. He said that he will be putting in silt fences for protection if anything blows off of the roof. He said that the plan is to take the roof off and put a second floor on. He said that when he started the process, the Building Inspector told him to go to the WPC and the Historical Commission.

Mr. Becker asked if part of the work is to take out a piece of the patio that is on town land. Mr. Sullivan said that it is. Mr. Seegel said that the Board will need to see the Order of Conditions.

Mr. Seegel said that the house is located within the 25 foot wetland buffer. Mr. Becker said that there should be something that says that this project has no impact on the wetlands.

Mr. Becker said that the Board received a letter from a neighbor who enthusiastically supported the construction but said that there is to be no parking on the street. Mr. Sullivan said that they have arrangement to park up the street. He said that he worked on the house at 11 Pickerel Road and neighbors allowed them to park on their lots. Mr. Seegel said that the Board will need to see letters from the neighbors who are granting permission to park on their lots, otherwise the Board will have to insert a condition that construction parking must be on Border Road. Mr. Sullivan said that they can park on the property at 9 Pickerel Road because there will only be two or three vehicles there at a time. He said that you could not park on Pickerel Road because it is only 18 feet wide. Mr. Seegel said that a condition will be that there will be no parking on Pickerel Road. He said that he can park four vehicles at Ms. Alevizos' sister's house up the street.

Mr. Becker said that because the request is for a special permit, LHR and TLAG do not apply. He said that the Board looks at TLAG to get a sense of how big the changes are and use that to compare the proposed house to other houses in the neighborhood, because key to the special permit is whether it will be detrimental to the neighborhood. He said that there is information on the plans that give what the living area will be and it is significantly under the size trigger in a 10,000 square foot Single Residence District but he could not tell if it will meet the percentage.

Mr. Redgate said that there are no dimensions on the elevations. Mr. Sullivan said that the height to the ridgeline is shown on the plot plan.

Mr. Becker said that the elevations are inconsistent with the plot plan. He said that the door is in the bathroom closet on the first floor.

Mr. Becker said that next to the wrap around deck on the back there appears to be an ac unit. Mr. Sullivan said that ac unit and the one of the left side are existing. He said that there are no plans to change them.

Mr. Becker said that the Board will need more information, including the Order of Conditions and floor plans that show a door consistent with the other plans. Mr. Sullivan said that he will get the letter for parking.

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

Mr. Becker read the Planning Board recommendation.

Mr. Sullivan said that he will submit a cross section plan.

Mr. Redgate said that the existing front setback of 8.8 feet will be maintained with the second floor.

Mr. Seegel asked about the size of the proposed landing. Mr. Sullivan said that it will be 3 feet by 5 feet.

Mr. Seegel said that he did not think that the contractors should park on this property. He said that they would have to put something down so that no oil drips and gets into the pond. Mr. Sullivan said that they can park up the street.

Mr. Redgate moved, Mr. Seegel seconded the motion, and the Board voted unanimously to identify the nonconformities, make findings that in accordance with Section XVII of the Zoning Bylaw, and approve a special permit, subject to conditions that the application be updated per the Board's discussion, and that there shall be no construction parking on Pickerel Road or at the site.

ZBA 2019-27, MATT COMELLA, 288 WASHINGTON STREET

There was no one present at the public hearing representing the Petitioner.

Mr. Becker said that the basis for the special permit relates to the size of the building façade but there was no information about the building façade submitted.

Mr. Seegel said that a letter of authorization for SignArt was submitted to the Board.

Mr. Becker said that he would like to have information regarding the size of the existing externally illuminated sign. He said that it appears that the proposal is to replace the sign in kind. He said that he could not tell from the day and night view photographs that were submitted how the tag line for homemade Italian food will be lighted. He said that it looks like it might be internally illuminated but it is hard to tell. Mr. Redgate said that it says that it is an existing sign from another store that they would like to reuse.

Mr. Redgate moved, Mr. Seegel seconded the motion, and the Board voted unanimously to continue the hearing to May 2, 2019, because of the failure of anyone to appear.

As there was no further business to come before the Board, the hearing was adjourned at 8:42 pm.

Respectfully submitted,

Lenore R. Mahoney
Executive Secretary