

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

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

November 1, 2018
7:30 pm
Juliani Meeting Room
Town Hall

Zoning Board of Appeals Members Present:

- Richard L. Seegel, Chairman
- J. Randolph Becker
- David G. Sheffield
- Robert W. Levy
- Walter B. Adams
- Derek B. Redgate

BUSINESS MEETING

ZBA 2018-25, NORTHLAND RESIDENTIAL LLC, 135 GREAT PLAIN AVENUE

Mr. Levy discussed comments regarding the decision to be voted and modifications to Conditions #9 and #16. Mr. Sheffield asked that language regarding the bench be changed to benches.

Mr. Adams moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to approve a final decision, subject to amendment Conditions 9, 15 and 16.

The business meeting was adjourned at 7:15 pm.

PUBLIC HEARING

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

Presenting the case at the hearing were David Himmelberger, Esq., representing the Delaney Trust and Paul Delaney, the Petitioner.

Mr. Himmelberger said that the request is for a variance to carve out a portion at the rear of 251 Weston Road and convey it to 251A Weston Road. He said that at the last hearing questions were raised about the plot plan and showing the driveway easement more clearly. He said that a revised plot plan was submitted that shows the deeded driveway easement that runs over 251 for the benefit of 251A Weston Road. He said

that the garage that is shown on Parcel A at the rear of 251 Weston Road would be reoriented and a note has been added on the plan to indicate that. He said that there was a suggestion that Town Counsel be consulted. He said that he sent a letter dated October 12, 2018 to the Board outlining what he believes to be the most salient points, the most significant of which is that the ZBA does have the authority to grant the requested relief. He said that this authority was previously exercised in a case before the Board in 2017, when three lots at River Ridge were reconfigured. He said that in this case there will be no change to the status quo. In that the garage location will not change. He said that approval could be conditional upon applying for and receiving an ANR from the Planning Board, which is a discretionary function even after the ZBA grants approval of a variance. He said that the pathway forward in cases like this is to first seek a variance and if it is granted, conditioned upon a favorable ANR, and subsequent razing of 251 Weston Road.

Mr. Himmelberger said that 251 Weston Road is a pre-existing nonconforming structure due to side yard setbacks. He said that it will be razed and a fully compliant new structure will be built on the newly created conforming lot. He said that 251A will remain a nonconforming lot. He said that the shape of the lot is the prong upon which the Board can grant relief without doing damage to the goals and intent of the ZBL. He said that if the relief is granted, there will be a lessening of nonconformities, as 251 will become a conforming structure. He said that 251A will be less nonconforming but the lot size will still be under 10,000 square feet. He said that the side yard setback for the garage will increase slightly. He said that Zoning relief can be granted based on the shape of the lot. He said that the hardship is that 251A would like the benefit of a garage. He said that the garage is already there. He said that they are simply seeking to transfer ownership to 251A. He said that they believe that there is nothing detrimental to the bylaw brought about by this actions and request favorable granting of a variance. He said that with the granting of a variance, any future relief that is sought for 251 A must be to modify a variance.

Mr. Levy said that he spoke with Town Counsel, Michael Zehner, Planning Director, and Michael Grant, Building Inspector. He said that there were several issues that were not resolved at the previous hearing. He said that he was concerned about jurisdiction that the Board has to grant a variance for a lot that is not owned by the Petitioner. He said that Mr. Himmelberger said that these are two separate lots with separate ownership that do not merge. He said that the owner of 251A is seeking a variance on 251. He said that 251 would not be entitled to a variance because the structure is pre-existing nonconforming and there is no relief that it would need unless the owner wanted to alter it.

Mr. Levy said that, by creating a new lot, it becomes subject to Table 3 setbacks where 18 feet is required for the rear yard instead of 10 feet. He said that the current structure is 12 feet off of the rear and 10 feet off of the side. He said that the proposed change will exacerbate the rear yard setback by 8 feet. He said that the relief requested in the petition was to legalize the lot. He said that it appears that two variances will be required, one for the rear yard and one for the side yard. He said that it appears that the side yard is self-imposed because they arbitrarily decided to draw the line 10 feet away where they could have drawn it 20 feet away. Mr. Himmelberger said that they could not do that because taking another 10 feet would make 251 a nonconforming lot. He said that if the Board grants the variance, Lot 1, with the removal of Parcel A at the rear, will have 10,047 square feet. Mr. Levy questioned why this would not be a self-imposed hardship. He said that it is an irregularly shaped lot with two feet of frontage but under the variance statute, the shape of the lot has to have a bearing to relief being sought. He said that he did not see how the shape bears upon the relief they are seeking.

Mr. Levy said that this house has existed for 90 years without a garage. He questioned why it is a hardship now. He said that the Board has seen many other petitioners look to expand detached garages from one to two bays. He said that this Board has consistently said that is not a hardship. Mr. Himmelberger said that

the garage will remain with a rear setback of 15 feet, regardless of the Board's action tonight. He said that if the Board does not act favorably tonight, the garage will remain with a 10.4 foot side yard setback. He said that it is not a case that is similar to petitions for a variance to expand or build a garage. He said that this is simply a case of trying to reconfigure existing lot lines and in the absence of reading the variance, the world would never know that the lot lines had changed. He said that this request does differ in substance from those instances in which the Board has held that the desire to have a new garage or an additional bay does not rise to a hardship level. He said that all that is changing is the lot lines. He said that the garage will be reoriented to face 251A Weston Road. He said that the proximity of the structures to one another and to the world will remain the same. He argued that the relief can be granted without substantial detriment to the public good and without nullifying or derogating from the intent of the ZBL. He said that the tables were put in the ZBL with the intent to apply to new building lots. He said that when that bylaw was amended, it was presented to Town Meeting as applying to new building lots. He read an excerpt from Section XIX B. of the ZBL. He said that this petition is not to erect or place a new structure upon a lot at 251A. He said that they do not believe that they are offending the bylaw with regard to the table because they are not creating a new building lot or placing a new structure on the property. He said that they believe that the Board does have authority to grant a variance to individuals at 251A for the purpose of their acquisition of Parcel A. He said they are asking that the variance that they are seeking be conditioned upon the conveyance of Parcel A to 251A. He said that this Board has done that in the past, which says that the Board has the authority to do it. He said that they are asking for the relief so that the lots can be more effectively utilized, with 251 becoming a fully conforming lot with a fully conforming structure, and 251A will enjoy the benefit of a garage. He said that because they are not building new structures, that outweighs a hard and fast interpretation or denial of the relief. He said that this will not be substantially detrimental. Mr. Levy said that this is not a Section 6 finding. Mr. Himmelberger said that there must be a finding by this Board that desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the ZBL. Mr. Levy said that there are several other requirements before you get to that. Mr. Himmelberger said that the shape of the lot is the predicate. Mr. Levy said that the shape of the lot does not relate to the garage, and if it does, it is self-imposed because they are creating the lot where the garage is. Mr. Himmelberger said that if the lot at 251A was rectangular, the relief could be granted more easily or not be required. He said that the shape of the lot does provide the Board with the ability to go to the next step to determine whether the desire relief can be granted without substantial detriment to the public good. Mr. Levy said that if this was a discretionary permit, based on a Section 6 finding or on one element of a variance, the Board could get there. He said that he is troubled by the fact that it is very difficult in the State and the Town to get a variance. He said that the Board grants very few of them over the course of a year. He said that the Board takes the requirements seriously. He said that the bylaw says that Table 3 is applicable to lots recorded or endorsed on or after April 8, 1997.

Mr. Adams said that the Board has in the past allowed a nonconforming building to seek a special permit to be demolished and reconstructed to be less nonconforming. He said that if the Board was to find that it could grant a variance to 251A to allow them to acquire additional land, which would decrease the nonconformity of that parcel while allowing the parcel at 251 to remain nonconforming as to lot area, he would not want to see the owners of 251 come back to the Board prior to the demolition of the existing structure to request a special permit/finding to demolish and reconstruct a structure that is not fully compliant. Mr. Himmelberger said that the intention is to not do that. He said that the Petitioner would accept that condition as part of the variance. He said that the proposal was that the variance be granted subject to favorable ANR from the Planning Board and the razing of 251.

Mr. Adams said that it is an unusually shaped lot that is nonconforming as to area and setbacks. He said that a hardship could be that the lot is of such a shape and size that it would not be possible to find a spot on that

pie shaped lot to place a garage. He said that this proposal provides 251A with an opportunity to acquire a garage. He said that he had not thought of the Table 3 issue. He said that Mr. Himmelberger made the argument that Table 3 was intended for new buildings on new lots. Mr. Levy said that any new lot created is subject to Table 3. He said that it exacerbates the relief being sought.

Mr. Levy said that he sent a copy of the petition to the Board Chairman, Dick Seegel, for review. Mr. Seegel said that he reviewed it and was troubled. He said that he did not see a hardship with the lack of a garage. He said that the house has been that way for dozens of years. He said that he was also troubled by the argument that the shape of the lot has any bearing because it does not relate to the relief granted. He said that there are many lots in town that have a similar situation and not all of them are solvable.

Mr. Adams said that it seems like this could be a no harm, no foul situation. He said that there will be no harm done to Lot 1 at 251 and no harm done to 251A, where it acquires land and a garage. He said that the Board did not hear any public comments at the previous hearing. He said that he did not see how this arrangement would create any inconvenience, hardship or imposition on any adjacent properties. Mr. Levy said that is not what the legal standard is. Mr. Sheffield said that Mr. Adams expressed his views very clearly.

Mr. Sheffield asked about the easement that accesses a parking area for 251A. He asked about extending the right of way to the new garage doors. He said that no harm, no foul applies here as well.

Asked if there was anyone present at the public hearing who wished to speak to the petition.

Mr. Adams said that the statute and the bylaw use the term financial or otherwise in terms for the hardship. He questioned how the Board would get to how the hardship has to be specific to the nonconformity that is being accepted as the basis for allowing the variance to be granted. Mr. Levy said that the bylaw mirrors the statute. He read an excerpt from Section XXIV-D of the ZBL. He said that case law is clear that just because you have an irregularly shaped lot, that you can have a variance anywhere on the lot.

Mr. Levy said that there is a solution without getting relief. He said that 251 can give an exclusive easement to 251A to the garage. Mr. Himmelberger said that it is generally perceived that houses and properties that are encumbered with easements are less desirable than those without. He said that while there is a driveway easement that is separate and apart from a larger Parcel A easement, they still could reorient the doors and come in that way. He said that under the exception to the Subdivision Control Law, the division of property upon which two functioning structures existed at the time that the town or municipality adopted the Subdivision Control Law, and on where the two functioning structures still exist, may be subdivided without subdivision control as an ANR. He said that is also a possibility and in that instance, with the conveyance of Parcel A to 251A, there would then be a merger for zoning of that ANR process, Parcel A having been created under the ANR. He said that, in that fashion, it would then merge with 251A if they are under single ownership. He said that the net result at that point would be that any future action at 251A would come in the guise of a special permit. He said that the Board has more control if it grants the variance. He said that it is a no harm, no foul situation where they will get the same result. He said that he believes that the shape of the lot allows the Board to make the finding and go on to the next determination that there is no detriment to the public good or derogation from the ZBL. He said that there are other ways around this but this is the preferred pathway by the parties involved because it is the least cumbersome and the cleanest way of addressing it, and gave the Board the most jurisdiction going forward. He said that the petition be allowed to be withdrawn without prejudice if the Board cannot unanimously approve the petition for a variance.

Mr. Levy asked Mr. Zehner if the Planning Board would consider an ANR for this without a variance. Mr. Zehner said that the Planning Board has done that in the past as long as the variance was not related to the frontage. He said that in this case, there may need to be notes about the buildability of the lots, independent of other lots. He said that the Planning Board originally viewed the sequence to need a variance contingent on the eventual ANR. He said that after discussions with Town Counsel, the Planning Board could feel comfortable considering the endorsement prior to the variance.

Chris Heep, Town Counsel, said that he agreed with what Mr. Zehner just said. He said that he did not believe that the ANR could be endorsed in its present form but with additional notes on the plan, he believes that it probably could. He said that the notes would probably have to designate Parcel A as not independently buildable. He said that if the plan were endorsed and Parcel A was conveyed to 251A without a variance, that would trigger a Zoning violation with respect to the existence of the garage on Parcel A being located for the first time ever within the side yard setback. He said that they could get their ANR endorsement probably as a matter of right with a few tweaks to the plan but if they do that, they are potentially buying themselves a Zoning Enforcement Action.

Mr. Himmelberger asked why the Merger Doctrine for Zoning violations would not apply. Mr. Heep said that, absent a variance, they will create a new side yard setback violation that cannot be mitigated by merger of the lots. He said that the merger will apply and help with respect to the undersized status of 251A, where it will make 251A less nonconforming. He said that structural violation will be new, absent a variance from the Board.

Mr. Himmelberger said that he doubted that his client would want to move ahead with an ANR that would lead to a Zoning Enforcement Order to remove a garage, which was the whole purpose of the proposition here and the relief sought. Mr. Levy said that it would get two things, one of them solving the issue of granting a variance on a lot that they do not own, and the second would be to come back before the Board again.

Mr. Adams said that he thinks that it is in the discretion of the Board if all three agree, that it could grant a variance based on the uniqueness of the lot and the hardship that was discussed. He said that there would still be the opportunity for a citizen to appeal the decision of the Board. He said that if there was no appeal filed during the appeal period, it would be a done deal. Mr. Levy said that the bylaw does not say no harm, no foul. He said that the relief being sought is not owing to the shape of the lot. He said that they are creating this lot, so it is self-imposed.

Mr. Sheffield said that the location of a new property line at the rear of 251 creates a side yard setback violation for the garage that has been self-created. Mr. Himmelberger said that it will remove an existing side yard setback violation at 10.4 feet and substitute a 10.5 foot setback.

Mr. Himmelberger asked that the petition be allowed to be withdrawn without prejudice. He said that similar relief was sought at River Ridge. Mr. Adams said that each case is dealt with individually.

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

ZBA 2018-74, PAULA ALVARY & JOSE VELEZ, 16 MOUNTVIEW ROAD

Presenting the case at the hearing were David Himmelberger, Esq., Paula Alvary and Jose Velez, the Appellants. Mr. Himmelberger said that, also present in the audience, are abutters and neighbors from 49 Suffolk Road, William and Sue Logan, William and Adele Beggs at 35 Suffolk Road, Richard Kent at 29 Suffolk Road, neighbors at 38 Suffolk Road. He said that a neighbor from 32 Suffolk Road sent an email. He said that neighbors from 93 Bristol Road were also present.

Mr. Himmelberger said that this is an appeal from a request for zoning enforcement, which was denied, and an appeal from the subsequent issuance of a Certificate of Occupancy for a single family home built at 16 Mountview Road.

Mr. Himmelberger submitted photographs of the existing slope at the rear of 41 Suffolk leading up to 16 Mountview Road, prior to construction. He said that, based upon plans that were submitted to the Building Department in the course of this construction project, it is clear that this gradually sloping hillside which appears to have risen about six feet from the rear of the property line over 31 feet. He said that, as a consequence of the construction, the razing of the existing structure and building the new structure at 16 Mountview Road, the rise was raised to 13 feet over a 12.5 to 13 foot run. He submitted materials to show the amount of fill that was required on the hillside to construct the new home.

Mr. Himmelberger said that one of the assertions by the builder and the builder's engineer is that the existing sloped rip rap wall over soil is placed on ledge. He said that there may be ledge in this ground but the rip rap and fill are placed on top of it, so the boulders do not sit on ledge but sit on a significant amount of unstabilized fill.

Mr. Himmelberger said that this construction was started in 2016 and over the course of time, his clients complained about safety concerns of the existing wall, which was comprised of a four foot high concrete wall at the base of rip rap. He said that he included numerous photographs in his appeal submittal which show the state of the wall as of the time of its collapse on April 16, 2018. He said that, as a result of poor construction, the entire wall and the slope above wall failed on April 16th. He said that his clients had been complaining and warning of this event for two years. He said that it was the subject of a stop work order in 2017. He said that an engineer retained by the builder submitted a letter saying that it was safe and the stop work order was lifted. He said that after the collapse on April 16th, Mr. Grant reached out to that engineer, who went out to the site and provided a letter indicating and confirming that the slope that the first engineer had designed had been significantly changed for the worse. He said that tons of debris came down onto his clients' property. He said that, after fall of wall, Mr. Grant issued a stop work order that was lifted when the builder retained a new engineer. He said that the stop work order required that the rebuilding of the wall be done under the supervision of a site engineer. He said that Richard Testa was retained by the builder. He said that Mr. Testa submitted periodic reports of the work that was being done. He said that Mr. Testa simply took the original design of the wall and used it again to rebuild an identical wall. Mr. Himmelberger submitted wall construction designs from the first engineer that shows a four foot concrete block wall over a three inch minimum recycled concrete leveling pad backed by three feet deep of ¾ inch crushed stone backfill and also noted that approximate ledge location. He said that the ledge location bears no relationship to what was really out there. He said that the rip rap sits on top of unstabilized fill. He said that the plan was submitted only for the design and construction of the four foot concrete block wall because the plan on its face said it was for the construction of the retaining wall, where the stability of the 1 to 1 slope has not been evaluated. He said that when Mr. Testa became involved, he took the identical plan and stamped it, again noting that it only addressed the concrete block wall and did not express any evaluation of the stability of the slope above it. He said that when Mr. Testa stated that the wall had been completed, and sought the blessing of the Building Inspector and the ultimate issuance of a Certificate of Occupancy, his client presented further

concerns to Mr. Grant and the engineer, noting expressly that the three inch concrete leveling base had never been placed there. He said that rather than place it there, Mr. Testa simply erased it from the plan and said that it should sit on existing grade and change the $\frac{3}{4}$ inch gravel to gravel backed fill. He said that it is important to note what Mr. Testa had originally said in May when he began construction of this wall. He said that Mr. Testa said that the new wall needs to be supported on proper bearing material and he personally planned to inspect the base material before the base blocks are reinstalled. He said that any organic material not limited to organic soil, stumps and trees needs to be removed from below the retaining wall. He said that Mr. Testa set a standard and he failed to meet it. He said that you can see a tree growing underneath the wall. He said that clearly it is not sitting on non-organic soil. He said that the tree that is shown in the original photos in the appeal package show a tree growing up on the other side of the wall, inside the wall. He said that when the wall was reconstructed, the tree was cut down so that the stump was beneath the slope. He said that there is no gravel underneath or behind the wall. He said that his clients watched intently throughout the summer as this work progressed. He said that his clients hoped that after complaining about the unsafety of the wall that a safe wall would be built. He said that it was built without a base or gravel backfill. He said that submitted a letter from an engineer attesting to that fact and noting that the industry standards all call for a proper base and made reference to the segmental walls industry practice. He submitted excerpts of a Segmental Retaining Walls Best Practices Guide.

Mr. Himmelberger said that the retaining wall was built on the property line with his client. He said that there is a two foot high rubble retaining wall 1.5 feet inside of his client's property. He said that his client's engineer's report expressed concerns that the wall was acting as retainage for the wall above. He said that there has been no evidence submitted to indicate that the wall can withstand the pressure of the concrete wall and the fill and rip rap above it. He said that the fill that cascaded onto his client's property is still there, acting as some additional support. He said that there is already erosion under the retaining wall that was built. He said that it is already pivoting outward and will fail again because it was not built correctly. He submitted photographs that show the proximity of the small rubble wall on his client's property and the location of the replacement of the wall that was built on built on the property line, in the same spot as the original.

Mr. Himmelberger said that his clients reached out to DPW in 2016. He said that one of the Town's engineers went out and expressed concerns about the wall being on top of an old fieldstone wall that was only loosely placed stones with no concrete and has not been constructed to serve as any type of foundation, and there is an 18 inch tree behind the wall and will be buried four feet deep after the wall has been finished, which is clear sign that the wall is being constructed properly. Mr. Himmelberger said that the tree has since been cut down and is even with the slope. He said that it was Mr. Van Houten's concern with the original construction was that the issues needed to be addressed because it was a safety issue. He said that the memo from Mr. Van Houten was dated May 25, 2016. He said that the wall has been rebuilt nearly identical to the prior wall, with exception that about a five foot concrete block masonry wall on top of the slope was not replaced this time. He said that there was a slight concaving of the slope to make it less severe in the area directly behind the concrete block wall. He said that the concrete block wall that retains unstabilized fill and rip rap four to five feet deep is not imbedded, is on a slope, and it will fail at some point.

Mr. Himmelberger said that, in addition to the concrete block wall that they concede is four feet tall, there is an extensive portion of rip rap wall that continues 150 feet and is clearly in excess of a 1:1 slope. He said that he submitted photos in a supplemental package that show the efforts to place a four foot level (square) against the slope to the right of the concrete wall, and it cannot be placed because is not 1:1.

Mr. Himmelberger said that throughout the course of the summer, his clients repeatedly asked Mr. Grant to meet at the site so that they could show him the fact that it was not forty-five degrees and Mr. Testa says that it is. He said that this is a case where the stamp of an engineer cannot override what you can see with your own eyes with a square. He said that when you look at the rip rap that is in excess of the 1:1 slope, you also see the crude attempt to put trees on the slope. He said that the burlap bagged evergreen trees that are about eight feet tall have been placed in what could be called a turret and buttressed with rock. He said that the trees sit in the burlap bags with no soil around them and are turning brown.

Mr. Himmelberger said that his clients do not believe that the wall was built in compliance with the engineer's original submittal, namely, that it would be built on a stable footing. He said that his clients do not believe that the wall was safely built and that significant portions of the rip rap wall are in excess of a 1:1 over a distance greater than four feet and within 10 feet of the property line. He said that his clients asked for enforcement of the Zoning Bylaw (ZBL) and for a wall that is greater than four feet and within 10 feet of the property line. He said that they were told that Mr. Grant was relying on the submitted plan and that was the end of it, and the CO was issued, which his clients from appealed from as well because they are left with a wall that it unsafe. He said that boulders the size of milk crates rolled half way down into his clients' yard. He said that the wall defies comprehension without footings, with all the fill and unstabilized soil behind it, and with no drainage in the concrete wall itself, where best practices show that there should be drainage at the bottom. He said that Mr. Testa said that there is drainage at the patio above, so they do not have to worry about the slope. He said that the wall is already failing, is in excess of the permitted steepness, and a final tree plan was never submitted. He said that, based on that, the Board should uphold the appeal and suspend the CO until the wall is safely built and is in compliance with the ZBL.

Ms. Alvary said that a photograph that was submitted shows her arm pushed into a void in the wall –

Mr. Grant said that the original slope and wall were signed off by a licensed engineer in 2016, before it failed. He said that the engineer signed off that the slope was 1:1 or less and the wall was constructed correctly. He said that between that point and April 16th, when there was a major rain event, the developer at 16 Mountview Road made significant changes to the property and the slope by putting up a cinder block wall and extending the yard out five feet, along with a patio to increase the yard. He said that, as a result of that, it severely surcharged at the top of the slope, and because of the rain event, collapsed, slid down and pushed the wall over that was at the bottom. He said that was the cause of the wall collapsing. He said that the developer made changes to the slope and added surcharge at the top by extending the yard out further. Mr. Adams asked about making changes to the structural design. He said that it was not still a correct design because the actions of the contractor caused the original design to become invalid because it was not what was built. Mr. Grant said that, as a result of the collapse, he requested that the engineer come out to the site to view the aftermath of the collapse. He said that the engineer submitted a letter saying that major changes had been made to the site and that invalidated his previous opinion of what that wall was capable of handling. He said that the engineer stepped away because he said that he was not responsible because changes had been made to the makeup of the slope. He said that, subsequent to that, he met with the Executive Director and Town Counsel to discuss enforcement action. He said that he issued a Stop Work Order because the changes that were made to the slope violated the Building Code and ZBL. He said that the developer said that he would put the slope back to what is was before. Mr. Grant said that he put the project under the control of a registered design professional and set various criteria that had to be followed and benchmarks to be met regarding submittal of documents on a timely basis and who the engineer would be. He said that he had several conversations with the engineer, who had a representative on site observing the working being done in accordance with the Stop Work Order. He said that they verified that the slope went back to a 1:1 configuration. He said that the wall itself retains less than four feet of unbalanced fill, so it is

not in violation of the ZBL. Mr. Adams asked if a retaining wall can be angled or does it have to be vertical. Mr. Grant said that it is sloped 1:1 or less, in accordance with Chapter 16, it is not considered to be a wall or retaining anything. Mr. Adams said that the rip rap is part of a retention system. Mr. Grant said that the Code says that boulders that are used for soil retention only are not subject to the criteria. He said that the rip rap on the 1:1 slope is not subject because it is there for soil retention, not for preventing. Mr. Adams said that the rip rap is not retaining any soil. Mr. Grant said that it is there to prevent soil erosion. Mr. Adams said that there is soil erosion going on. Mr. Grant said that the soil erosion is not on the slope. He said that the engineer signed off on the wall under the controlled construction and also signed off that the slope is less than 1:1. Mr. Adams said that he understands that Mr. Grant was relying on a professional engineer. Mr. Adams said that he spent a lot of time at the site and took photos. He said that he did not believe that the slope is 1:1 or less. He said that it may have shifted from the time the engineer certified it. He confirmed that Mr. Grant was not present when the engineer certified the slope. He said that the Building Inspector can demand further investigation if what he sees does not jibe with what the engineer has certified. He said that it is clear that it is the same design of concrete wall. He said that the wall has to be built to defined standards and this has not been. Mr. Grant said that he sent concerns to the engineer twice and he responded that the wall was built to industry standards.

Mr. Seegel said that the wall is one continuous wall that goes all the way up the hill. He said that the boulders are part of the retaining wall, in his opinion. He said that it should not have been built without a special permit from the ZBA. He said that the whole approach to this has been incorrect.

Mr. Adams said that a retaining wall is more than just vertical abutment at a base of slope. Mr. Grant said that he followed the Building Code to form his opinion. He said that the ZBL does not say that a slope at less than 1:1 is a retaining wall. He said that he had to apply the Building Code. Mr. Adams said that he was not convinced that that the slope is 1:1. He said that it is much steeper than 1:1. He said that he circled the entire area from the base and walked along the top at the metal fence and down the slope. He said that it is not a 1:1 slope and it is not a structurally sound wall. He said that as Building Official, he can attest that it is not structurally stable and appears to be in the early stages of collapse. He said that this Board believes that a retaining wall is an assemblage of materials, both vertical and angled, that retains soil. He said that this is retaining soil all the way up the embankment, and in its totality constitutes a retaining wall. Mr. Seegel said that he agreed with Mr. Adams. He said that he looked at the property. He said that if you stand at the top of the wall on Mountview Road, if a child fell, they would go all the way down the boulder slope, which he considers to part of this wall. He said that the bylaw was written to avoid that type of situation. He said that the wall should be started again.

Mr. Adams said that the owners of the lower property do not have to grant access to the developer. He said that the developer did not consider the interest of neighbors or build in a way that would not interfere with their normal lives, much less worry about injury. He said that it is a tough slope to begin with and may not have been suitable for the structure that was built there. He said that there was not enough room on the lot that was buildable. He that an alternative would have been to build a smaller house.

Mr. Redgate said that the retaining wall, as designed, with plans that Mr. Grant would have prior to construction, show the wall right on the border of the bylaw at four feet and a slope that is less than 1:1. He said that any more of a slope of rip rap or an inch higher would have required a special permit. Mr. Grant said that he has to apply regulations. He said that he got an engineer involved to verify that the wall met the Building Code with a 1:1 or less slope and that it was built correctly. He said that he took all of the necessary steps. He said that Town Counsel monitored the enforcement action. He said that Town was advised of and participated in every conversation that Mr. Grant had about this and was consulted on a

regular basis. He said that at no point was he told that he was out of bounds or that they felt that it was a Zoning violation. He said that they received all of the same plans, emails and documents that were involved in this. Mr. Adams said that the Building Inspector can look to Town Counsel for advice but the Building Inspector has to decide what is right and put the onus on the developer to challenge the Building Inspector in his determination that this is a retaining wall that is more than four feet within ten feet of the property line. Mr. Grant said that he did that. He said that he also has the right to ask Town Counsel if their opinion was that the Building Inspector was still in compliance with the regulations.

Mr. Seegel asked if the Building Inspector has the authority to ask the developer to hire a structural engineer. Mr. Grant said that Mr. Testa was the structural engineer that was hired by the developer, in compliance with Mr. Grant's requirement to hire a structural engineer. Mr. Adams said that Mr. Testa stamped the same plan as the earlier civil engineer had prepared. He said that the deluge on April 16th caused a collapse that was a result of the contractor apparently making changes that were not reflected in the approved plans and were made without seeking approval from Mr. Grant. He said that the new structural engineer that was hired submitted the exact same plan. He said that, from what he has seen on the plans, the masonry wall at the plaza level was not shown on the original plan. Mr. Grant said that when the first wall built, there was no upper wall. He said that it was done between the time the Building Department signed off on the original wall and when the developer made landscaping changes without seeking approval. Mr. Adams said that the landscaping changes are still in place. He asked if Mr. Grant ever reviewed and approved amendments to the original plan to include the wall at the plaza level. Mr. Grant said that wall is not subject to regulation because it is not retaining four feet or more and is not subject to the Building Code or the ZBL. Mr. Adams said that wall was never part of the permit. He said that Building Inspector still had to accept that as part of the work that was being done, regardless of whether it was subject to the Building Code or Zoning. Mr. Grant said that under the controlled construction process, that was what he did. He said that it is a landscaping item. Mr. Adams said that he thought that it was a structural element. Mr. Grant said that it plays no structural part in holding up the slope.

Mr. Seegel asked if a retaining of four feet have to be 10 feet off of the property line. Mr. Grant said that the bylaw says that a wall that retains less than four feet of unbalanced fill is exempt.

Mr. Redgate asked if the geometry of the retaining wall ZBL is being appealed by saying that it is greater than four feet. Mr. Himmelberger said that the appeal is for two things, the denial of his clients' request for zoning enforcement as to retaining walls because they are in violation of the bylaw, based on geometry, and the issuance of a CO. He said that central to the stop work order, the first item cited was that the project had become a threat to public safety. He said that they are appealing the issuance of a CO because they believe that the wall, as configured today, continues to pose a public threat as it erodes and moves outward. He said that the survey that was submitted by Mr. Testa that attests to the wall height or slope, says that it has a target on a window sill at TBM-B. He said that if you look at the configuration of the building shown on the plan, you cannot find the building and the window sill on the As-Built Plan. He said that the As-Built Plan of the structure does not line up with the design that Mr. Testa said that he targeted on the window sill.

Mr. Seegel read Section XXIID.C.3 of the Zoning Bylaw. He questioned why the Building Inspector did not require a special permit for the wall. Mr. Grant said that he applied Section XXIID.B. Applicability and Exemptions, Item #1, that addresses exceptions and exemptions. Mr. Adams asked Mr. Grant determines that the wall does not retain more than four feet of unbalanced fill. Mr. Grant said that the Building Code says that a slope at 1:1 is not considered unbalanced fill. Mr. Seegel said that he interprets a wall that continues to slope up from the vertical as part of that wall, and requires a special permit. Mr. Redgate disagreed. He said that this is a design and construction issue, not a Zoning issue. Mr. Adams said that he

did not think that it was a structural issue. He said that the clear purpose of that sections of the ZBL is to limit the encroachment on adjacent properties to keep a developer from artificially increasing or changing a slope so close to a neighboring property so as to create a four foot high wall within ten feet of the property line. Mr. Becker said that if the issue is slope, the bylaw should regulate slope. He said that if the lower wall, notwithstanding its height, was properly designed, there would not be an issue. He said that the wall was not properly designed and installed.

Mr. Himmelberger said that he agreed but his clients would still be present because of the area to the right of the retaining wall is rip rap that is clearly in excess of a 1:1 slope and therefore is a retaining wall. Mr. Himmelberger said that the original plans did call for an entire row of trees at the base of the slope, above the retaining wall. He said that they moved the plateau out about 15 feet.

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

Kevin Smith, Esq., said that he was representing the developer at 16 Mountview Road. He said that the Building Inspector played by the book. He said that something happened on April 16th with an extraordinary rain event and the Building Inspector shut the project down, consulted with whomever he felt was appropriate, ordered the builder to hire an independent engineer to look at plans, come up with a design, supervise construction and then certify the work that was done. He said that the Building Inspector's stringent order was complied with to the letter by the builder. He said that the only plan that is certified by a licensed professional in the Commonwealth of Massachusetts says that it is 1:1 slope or less all of the way around. He said that he respected people's ability to go out an eyeball something but that is different from having a surveyor go out to the property with instruments, take measurements, put them on a plan and certify that the measurements are accurate. Mr. Adams asked if the plan was stamped by a land surveyor. Mr. Smith said that it was stamped by an engineer from Framingham Survey Consultants, Inc. He said that Mr. Testa has the authority to stamp such a plan as long as he is satisfied that it was done accurately. He said that structural engineer watched the construction and then certified that it was done in accordance with the plan. He questioned whether the Building Inspector should be second guessed since he had done everything by the book, based on what people see when they walk around the property.

Mr. Adams said that he was not comfortable with the jump that the Building Inspector made from the wording in the ZBL and his interpretation that the rip rap wall is not a retaining wall if it meets or is less than a 1:1 slope. He said that there is nothing in the ZBL to lead him to determine that. Mr. Grant said that he agreed and that was why he applied the Building Code to it. He said that he used available resources and applied the regulations that he felt were appropriate to make sure that it met the ZBL and the Building Code.

Mr. Seegel moved and Mr. Adams seconded the motion that the Board accept and approve uphold both appeals of the Building Inspector's decision. The Board voted unanimously to uphold the appeal of the Building Inspector's issuance of a Certificate of Occupancy. The Board did not vote unanimously to uphold the appeal of the Building Inspector's denial of enforcement of the Building Code and the Town of Wellesley Zoning Bylaws and that appeal was denied.

2017-80 WELLESLEY SPORTS CENTER/TOWN OF WELLESLEY, 900 WORCESTER STREET

As the Petitioner was unable to move forward at this time, at the Petitioner's request, the petition was not heard.

ZBA 2018-70, BEN & MEGAN HABER, 5 WINGATE ROAD

Presenting the case at the hearing was Laurence Shind, Esq. and Ben Haber, the Petitioner.

Mr. Shind said that the project involves a modest two-story addition to the rear of the existing nonconforming house on a conforming lot. He said that the house was built in 1951 and has a TLAG of 2,572 square feet. He said that the lot is 12,000 square feet in a Zoning District that requires a minimum of 10,000 square feet. He said that the front and right side of the existing house are nonconforming. He said that the existing nonconformities will not be changed as a result of the addition. He said that the proposed addition at the rear will conform to rear and side yard setbacks. He said that after construction, the TLAG will be 3,132 square feet and lot coverage will go up to 14 percent. He said that the property is located in a – Water Supply Protection District (WSPD). He said that they received an Order of Conditions from the Wetlands Protection Committee (WPC). He said that the Planning Board has reviewed and recommended approval of the application. He said that the proposed addition will be modest in size, resulting in a small increase in TLAG and lot coverage, and will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Mr. Seegel asked if the Order of Conditions has been recorded. Mr. Shind said that the Applicant was awaiting the Zoning Board's review and will record everything at the same time.

Mr. Adams asked if the Applicant had spoken to the neighbors about the proposed alteration. Mr. Haber said that the neighbors were notified via direct mailing from the Surveyor. Mr. Haber said that they spoke with the neighbors and answered questions that they had.

Mr. Adams moved and Mr. Redgate seconded the motion to grant a special permit to allow alteration of a nonconforming structure, finding that the pre-existing nonconforming structure has a 27.4 foot front yard setback where 30 feet is required and a 19.9 foot right side yard setback where 20 feet is required, that the proposed alteration does not result in any additional nonconformities, the proposed alteration does not result in the intensification of existing nonconformities, and the altered structure shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, subject to recording of the Order of Conditions, MassDEP File, 324-0877. The Board voted unanimously to grant a special permit.

Mr. Adams moved and Mr. Redgate seconded the motion to grant a special permit for an alteration in the Water Supply Protection District. The Board voted unanimously to grant a special permit.

ZBA 2018-71, GERARDO VENTURA, 14 WILDE ROAD

Presenting the case at the hearing were Tara and Gerardo Ventura, the Petitioner, and Michael Hally, Architect.

Ms. Ventura said that the request is for relief for a side yard setback. She said that they purchased the house in 2012 when they had two children and they now have three children. She said that they would like to build an addition to their house because they love the neighborhood and want to stay there. She said that they spoke with all of their abutters and showed them the plans. She submitted a letter that was signed by abutters, stating that they do not object to the proposed changes.

Mr. Hally said that the existing garage with a bedroom on top of it on the left hand side is 9.7 feet off the left side lot line. He said that they will demolish the existing garage that is connected to the house by an open breezeway. He said that they will pull forward a square garage with a dormered bedroom on top. He said

that across the back of the new garage and the house, they will construct a one story addition for a great room. He said that they will also build a small addition on the right side that will meet setback requirements for a home office on the first floor and a bedroom expansion on the second floor. He said that his clients wanted a wider garage. He said that they will move the garage away from the left side lot line but it will not be totally conforming. He said that they will maintain the look and profile on the left side elevation. He said that there is a small addition behind the garage. He said that the house was built in the 1930's and there is no basement, just crawl space under. He said that the new foundation under the great room will have full basement for utilities. He said that the small addition at the back will provide a stairway down to the basement space. He said that they went to great lengths to make sure that this project was affordable and the homeowners got what they wanted. He said that the project was approved by the Wetlands Protection Committee (WPC) earlier this evening.

Mr. Adams said that it was good that the Applicant shared the plans with the neighbors. He said that, although there will be continued encroachment into the side setback, the design has reduced the impact of the neighbor by the arrangement of the forms that make up that side. He said that it was nicely done.

Mr. Redgate confirmed that the bulkhead is exempt from the side yard setbacks.

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

Mr. Seegel read the Planning Board recommendation.

Mr. Adams moved and Mr. Redgate seconded the motion to approve a special permit, find that the pre-existing nonconforming structure has a 9.7 foot left side yard setback where 20 feet is required, that the proposed alteration does not result in any additional nonconformities, the proposed alteration does not result in the intensification of existing nonconformities, and the altered structure shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, subject to recording of the Order of Conditions. The Board voted unanimously to approve a special permit.

ZBA 2018-73, QI YU & JING HUA, 10 HASTINGS STREET

Presenting the case at the hearing were Qi Yu and Jing Hua, the Petitioner, and Tuan Nguyen, Structural Engineer.

Mr. Nguyen said that the house was built around 1900. He said that it is very small with 1,000 square feet of living area. He said that there are three small bedrooms on the second floor. He said that the request is to build an addition on the rear for a family room on the first floor a full sized bedroom on the second floor. He said that his clients have two children. He said that they will not be adding another bathroom because it is not in the budget. Mr. Seegel asked about setting aside space with rough plumbing for a bathroom in the future. Mr. Nguyen said that his clients are happy with the full bathroom on the first floor.

Mr. Nguyen said that he tried to replicate the side elevations, as shown on Elevation Drawing, A-6. He said that the height of the addition will be the same as the height of the existing house.

Mr. Nguyen said that the existing side yard setback is 13.8 feet where 20 feet is required.

Mr. Adams said that the lot is only 50 feet wide.

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

Mr. Adams moved and Mr. Redgate seconded the motion to approve a special permit, and make findings that the pre-existing nonconforming structure has a 20.4 foot front yard setback where 30 feet is required, a 9.9 foot left side yard setback where 20 feet is required, a 13.8 foot right side yard setback where 20 feet is required, a 10,000 square foot lot where 15,000 square feet is required, and 50 feet of frontage where 60 feet is required, and that the proposed alteration does not result in any additional nonconformities, the proposed alteration does not result in the intensification of existing nonconformities, and the altered structure shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The Board voted unanimously to approve a special permit.

ZBA 2018-73, MICHAEL & NICOLE FERRANTE, 14 OX BOW

Presenting the case at the hearing were Jan Gleysteen, Architect, and Michael Ferrante, the Petitioner.

Mr. Gleysteen said that the request is for relief for a 9.9 foot right side yard setback. He said that the house was built in 1931. He said that the TLAG threshold for Large Review for the district is 5,900 square feet. He said that TLAG of the existing house is 3,092 square and they will add 649 square feet, for a total of 3,741 square feet.

Mr. Gleysteen said that the exiting house is nonconforming on the right side and the lot size is under 17,500 square feet in a district in which the minimum conforming lot size is 20,000 square feet. He said that the request is for a special permit to build an addition, 12 feet by 20 feet, partially one story and partially two story.

Mr. Gleysteen said that the Ferrantes had a third child a short time ago. He said that the plan is to add a third bedroom and bathroom and bumping out the kitchen for a breakfast nook.

Mr. Haber said that they spoke with their neighbors about the plans. He said that Anne Melvin, who is the neighbor who would be most affected, sent an email in support of the project.

Mr. Seegel read the Planning Board recommendation.

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

Mr. Adams moved and Mr. Redgate seconded the motion to approve a special permit, and make findings that the pre-existing nonconforming structure has a 10.2 foot left side yard setback where 20 feet is required, a 9.9 foot right side yard setback where 20 feet is required, and is a 17,407 square foot lot where 20,000 square feet is required, and that the proposed alteration does not result in any additional nonconformities, the proposed alteration does not result in the intensification of existing nonconformities, and the altered structure shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The Board voted unanimously to approve a special permit.

ZBA 2018-64, 680 WORCESTER ROAD LLC, 680 WORCESTER STREET

ZBA 2018-65, 16 STEARNS ROAD LLC, 16 STEARNS ROAD

Present at the public hearing was Geoff Engler, representing 680 Worcester Road LLC and 16 Stearns Road LLC. Also present was Robert Nagi, Traffic Engineer, VHB.

Mr. Levy said that although it is the same developer and the projects are in close proximity, the petitions will be considered to be separate.

680 WORCESTER STREET

Mr. Nagi discussed his peer review of traffic for 680 Worcester Street. He said that the Traffic Study was done in a professional manner and the projections are accurate and to industry standards. He said that he looked at the site plan in terms of connectivity, pedestrians, bicycles, parking and general circulation.

Mr. Nagi said that 35 parking spaces for 20 residential units is within standards. He said that 1.5 spaces for each apartment falls in the middle of the range and he is comfortable with the number.

Mr. Nagi said that the project will not be a large traffic generator. He said that he asked the Applicant to look at the pedestrian crossing on Route 9 at Kingsbury Street. He said that any additional pedestrian traffic would negatively affect that crossing.

Mr. Nagi said that he looked at transit services. He said that the MWRTA changed its bus route and riders will have to walk farther to get to the bus route.

Mr. Nagi said that the Sports Complex and other residential projects should be taken into consideration in the 7 Year Horizon for traffic growth.

Mr. Nagi said he looked at trip generation on comparable sites and found for a 20 unit complex, that there will be an average of 110 daily trips with 55 in and 55 out. He said that Route 9 has significant volume. He said that they expect seven to nine peak hour trips from this project.

Mr. Nagi said that capacity analysis looks at how the project will influence delays at intersections.

Mr. Nagi discussed safety and clear sight lines at the driveway, which appear to be adequate. He said that he asked for notations on the site plans that designate any signage or landscaping be installed at a minimum height. He said that the Applicant will have to apply for a curb cut on Route 9 from MA DOT, who will look at safety issues.

Mr. Nagi said that the site design should provide notations that the signage is compliant with the manual. He asked that the Applicant provide more information about school buses, electric vehicle charging stations, transportation demand management, carpooling, transit, bicycles and bicycle storage on the site.

Mr. Nagi said that the sites are congested from a development perspective with most of the site taken up by building and parking uses. He asked for more information on the southwest spaces where two pairs of spaces head in parking one behind the other. He asked if they will be assigned and how they will be used.

Mr. Nagi asked about snow storage. He said that using parking spaces for snow storage will bring the ratio too low.

Mr. Nagi asked for more detail on the parking structure be provided, with additional turning movement graphics for larger truck WB 40 or moving trucks. He said that could be handled with a management plan.

Mr. Nagi asked that more information be submitted regarding clearance under the garage. He said that there was nothing on the plans that shows a loading/unloading area. He said that the depth from Route 9 is short and it is important to not block the main aisle.

Mr. Nagi asked said that dumpster operations are not clearly identified.

Mr. Nagi said that the stacker parking at the southeast corner of the site is located on an easement that is dedicated to the Town. He asked about legal rights.

Mr. Nagi said that the Fire Chief should be asked to give his input on the ability to fight fire on the site. He said that access is provided off of Route 9. He said that the Fire Department needs access to three sides and he did not see it on the plans. He said that he did not see other opportunities to create access or roadways.

Mr. Nagi said that he would like to see a Construction Staging Plan, given the magnitude of the site off of Route 9 and limited parking nearby. He said that the plan should show how the building will be constructed, staging areas, contractors on site, and contractor parking.

Mr. Nagi said that three major concerns are the ability to load trucks/garbage, fire apparatus access, and the stacker parking on top of the easement. He said that snow storage in parking spaces could bring the ratio below a comfortable level.

Mr. Zehner said that Mr. Nagi's peer review was based on the original submission, not on the revised plans. He said that the Town Engineer is still reviewing the revised plans.

Mr. Becker asked if the Traffic Study looked at traffic generated over 24 hours a day. Mr. Nagi said that they looked at daily traffic over 24 hours and then peak hours. He said that they looked at how traffic will be generated during those hours, based on a project of similar size.

Mr. Levy asked about assigned parking. Mr. Nagi said that there was no indication of that in the study. He said that below 2.0 parking spaces, they typically like to see at least one space per unit assigned.

Mr. Levy asked about the ratio of visitor spaces. Mr. Nagi said that typically there is for every unit, 0.15 parking spaces allocated to visitors. He said that for this project with 20 units, there should be three to four visitor spaces. He said that because there is no off-site parking here, he would recommend four to five visitor spaces. He said that there was no guidance provided for use of the visitor spaces used. He said that there will be two handicapped parking spaces.

Mr. Redgate asked how the new traffic light on Route 9 will affect the queue of cars in the morning and afternoon. Mr. Nagi said that it is not uncommon to experience backup on Route 9. He said that the new signals are a safety improvement in a high crash location. He said that 10 cars would be a large impact which is why they would want to contain the queue on the site. He said that the turnaround left of the lights should not significantly affect the queue. He said that accessibility is important, so he would like to see more information about circulation on the site.

Mr. Becker asked about the stackers over the easement. Mr. Zehner said that the stackers have been moved away from the sewer easement on the revised plan. He encouraged the Applicant to speak with the Building Inspector, as the building will be cantilevered over the easement.

Mr. Zehner said that the MWRTA should be asked to put a pull off for the Route 1 bus along Route 9.

16 STEARNS ROAD

Mr. Nagi said that he used the same approach in his peer review of the Traffic Study. He said that he looked at the site within the general area of Stearns and Francis Roads, and its accessibility and circulation.

Mr. Nagi said that there will be 2.1 parking spaces per unit and he was comfortable with that number. He said that the Kingsbury pedestrian crossing does not appear to create significant impact issues.

Mr. Nagi said that the only outlet from the Stearns/Francis Roads are is to Route 9. He said that Stearns is rather narrow and has no parking signs on the road. He said that it has approximately 20 feet of pavement, with some sections with less.

Mr. Nagi said that his comments regarding the MWRTA are the same as for 680 Worcester Street.

Mr. Nagi asked if the existing house was vacant when the traffic counts were done.

Mr. Nagi said that he looked at the intersection and the influence of a project with 8 to 11 new vehicle trips. He said the impact will be a busier street. He said that he looked at the ability to get out onto Route 9. He said that there is a white picket fence at the corner of Francis Road and Route 9. He said that the sight lines should be looked at.

Mr. Nagi said that there appears to be a dead end at Stearns Road with a possible connection to the school area.

Mr. Nagi said that the roundabout area in front of the building will have good access for visitors. He said that at 20 feet wide, it will be clear for drivers and will not block traffic.

Mr. Nagi asked for confirmation from the school regarding the pedestrian connection being completed on the town side.

Mr. Nagi said that school bus access will be a challenge. He said that most students will walk to Sprague. He said that if the students need transit or a school bus, they will need to make arrangements because the cannot get down Stearns and there is no turn around at the end of Stearns.

Mr. Nagi asked that the location of bicycle parking be shown on the plan

Mr. Nagi asked for more information on the underground parking. He asked how it will be striped, delivery and moving vehicles access and circulation, loading and unloading for garbage.

Mr. Nagi asked for more information about Fire Department access. He asked if a ladder truck will be needed.

Mr. Nagi asked for more information on construction management, including how the Developer anticipates building the project and staging materials.

Mr. Nagi asked about the purpose of the gate at the end of the road.

Mr. Levy asked if any off-site improvements were recommended. Mr. Nagi said that this is a residential project and most people know where they are going. He said that increasing the width of Stearns Road would be good.

Mr. Redgate asked Mr. Nagi if he had any recommendations for sidewalks. Mr. Nagi said that a sidewalk may not fit on the roadway. He said that they could ask the neighbors if they would like to see one. He said that there will be some pedestrian traffic generated but not a lot.

Mr. Becker asked about signage at the project and along the roadway.

Mr. Levy said that it is a tough site for circulation and turn around.

Mr. Nagi asked for more information about access to and from the site, particularly for larger vehicles, and for Fire Department access.

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

Pete Buhler, 10 Stearns Road, asked about the extent of data of foot traffic for children walking to the schools. He said that K-5 students use Stearns and Francis roads to get to the gate at the baseball fields. Mr. Becker confirmed that the students use the same route in the winter.

Mr. Buhler said that there will be two driveways coming out where children walk to the access to the Sprague footpath.

Mr. Levy asked if the neighborhood would like to see sidewalks there. Mr. Buhler said that he did not think so. He said that some old trees would probably have to go.

Mr. Buhler said that the only access will be from Route 9.

Mr. Buhler said that National Grid has been working in the neighborhood. He said that a lot of work is being done near the project.

Mr. Buhler said that winter is difficult with such a narrow opening to Route 9. He said that a large mound of hard crusted snow reduces the line of sight, which is a concern for children walking on the sidewalk.

Mr. Becker said that Mr. Buhler's letter talked about stormwater and wetlands issues. Mr. Buhler said that there is a culvert that services neighborhood.

Scott Fraser, Stearns Road, said that the original traffic study was done in June before the lights were changed at Kingsbury Street for turnaround. He said that they have already experienced backups onto Route 9 from Francis Road and there will be more people trying to get out and add to the traffic queue. He talked about the queue at the turnaround by Oak Street, cars turning eastbound blocking line of sight, and congestion issues.

Mr. Fraser said that the truck routes appear to be identical for the two projects.

Mr. Engler discussed materials that he will provide to the Board.

Mr. Becker moved and Mr. Redgate seconded the motion, and the Board voted unanimously to continue the hearing to November 20 at 7:30 pm.

As there was no further business to come before the Board, the hearing was adjourned at 11:30 pm.

Respectfully submitted,

Lenore R. Mahoney
Executive Secretary

DRAFT