

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

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

Thursday, March 2, 2017, 7:30 pm

Juliani Meeting Room
Town Hall

Zoning Board of Appeals Members Present:

Richard L. Seegel, Chairman
David G. Sheffield, Acting Chairman
Robert W. Levy
Derek B. Redgate

ZBA 2017-17, DANA HALL SCHOOL, 28 HAMPDEN STREET

Presenting the case at the hearing was David Himmelberger, Esq., and Charles Breslin, CFO, Dana Hall School, the Petitioner. He said that there have not been any issues with the housing. He said that it continues to be used for faculty housing. He said that the request is for renewal of the special permit.

Mr. Seegel asked if there are two families living in the home. Mr. Himmelberger said that there are. Mr. Seegel asked if there have been any complaints from neighbors. Mr. Himmelberger said that there have not been any complaints. Mr. Breslin said that the Director of Riding and a French teacher are living there.

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

Mr. Seegel said that the previous special permit was subject to six conditions. Mr. Levy read the conditions:

1. The two-family dwelling shall be used for faculty housing only and shall not be rented out for any other purpose and shall revert back to a single family dwelling if it ceases to be used as faculty housing in connection with Dana Hall's education purpose.
2. The Petitioner shall comply with the requirements and recommendations of the Inspector of Buildings and the Fire Department.
3. Sufficient off-street parking shall be provided so that no vehicle associated with the two-family dwelling shall be parked on any street in the neighborhood.

4. No sign identifying the premises shall be displayed on the property except in accordance with the Zoning Bylaw.
5. There shall be no disturbance or disruption to the residential neighborhood.
6. This Special Permit shall expire two years from the date time stamped on this decision.

Mr. Sheffield said that the Planning Board recommended that the Zoning Board approve the special permit.

Mr. Seegel moved and Mr. Levy seconded the motion to grant renewal of the special permit for 28 Hampden Street, subject to the conditions that are currently in effect. The Board voted unanimously to grant renewal of the special permit.

PUBLIC MEETING

ZBA 2016-29, JUANN KHOORY, 18 KENDALL ROAD

Mr. Sheffield said that the construction was given a cease and desist order by the Building Inspector because he felt that, based on complaints from neighbors, the construction had exceeded what had been approved by the Zoning Board of Appeals.

Mr. Seegel said that this came before the Board procedurally due to a neighbor's complaint. He said that the Building Inspector felt that the Board had to make a determination whether the work has exceeded what was approved in the variance. He said that subsequently, the Building Inspector received several more complaints from neighbors and he issued a stop work order. He said that stop work order is not under appeal. He said that the Board has not received a letter from anyone appealing the decision.

Mr. Seegel said that this was scheduled for a Business Meeting to make a determination as to whether the work exceeds or is still within the scope of the original variance. He said that if the Board decides that it exceeded what was approved in the original variance, the Board will have to schedule a public hearing.

Mr. Seegel said that, with the stop work order issued, the correct way to proceed is for the Petitioner to file a formal appeal of the Building Inspector's decision. Mr. Levy said that, alternatively, the Petitioner could seek to modify the original permit. He said an appeal or request for modification would have to be publicly noticed.

Mr. Seegel said that the Petitioner is present tonight in a Business Meeting capacity. Mr. Sheffield said that the Petitioner is present to understand how to proceed. Mr. Seegel asked if the Business Meeting was scheduled after the Building Inspector issued the stop work order.

Tim Bobuly, Builder, said that the Building Inspector informed them that they could go ahead with some of the work to install the windows and roof and then stop work. He said that they were told that they would have to go before the Zoning Board to see if they exceeded the Zoning Board's original approval.

Mr. Seegel confirmed that the Building Inspector allowed the Petitioner to make the structure weather tight.

Juann Khoory, property owner, said that the Building Inspector issued a verbal stop work order because some of the neighbors complained that the work may have gone beyond what was approved by the Board on March 21, 2016. She said that the Building Inspector told her that he would like to have her go before the Board at a Business Meeting to show them an as-built and what was approved by ZBA to confirm that the scope was not exceeded. She said that nothing changed in terms of square footage, height, or massing. She said that the variance that was approved by the Board allowed a bump at the front to create an entrance. She said that they built a smaller bump than what was approved. She said that she brought evidence of what was there and what the Building Inspector permitted them to build.

Mr. Seegel said that the problem may have been created by Ms. Khoory's failure to come back to the Zoning Board and the Building Inspector when she discovered conditions that she was not expecting. He said that she should have stopped the work at that point. He said that the Board did not approve taking studs down on the first floor. He said that the Building Inspector is limited in his authority by what the Zoning Board approves. Tim said that he was under the assumption that was not part of the Zoning Board approval. He said that he thought that the Zoning Board approval was to do the bump out and the height. Mr. Seegel said that whatever the Board approves in the way of plans is what you must build. He said that the plans cannot be modified unless the Building Inspector deems that it is a minor modification or a Building Code requirement. Mr. Khoory displayed plans showing the work that was approved by ZBA. She said that they noticed damaged walls after demolition. She said that they did not touch the foundation. She said that they did not change the basement area.

Tim said that they replaced the first floor walls with new studded walls because, when they discovered what the condition was, they were completely rotted. He said that it was old wood and there was animal feces in there. He said that there were holes and nests. He said that it was not the right way to finish the job. He said that he thought that he was doing the right thing by bringing it up to code. He said that he was not under the impression that he was doing something wrong. He said that they typically speak with the Building Inspector at the Rough Frame Inspection. He said that Mr. Grant agreed that they had done the right thing but they had not followed the right procedure. He said that he was unaware that such a minor change would affect the Board's decision.

Mr. Seegel said that when a petitioner files an application, postcards go out to all of the neighbors. He said that people did come in to look at the plans. He said that they knew that it was a modification of a variance, which has a higher standard than a special permit. He said that when the neighbors saw the part of the end wall was taken down to the deck, they saw that was not authorized in the plans.

Mr. Sheffield said that the house is partially built with a change to the dimensions of the studs because the previous exposed construction was found to be unsupported of the second story. He said that there is a stop work order by the Building Inspector.

Mr. Levy questioned whether it should be the Building Inspector's call whether the modifications are serious enough to require modification of the permit. Mr. Sheffield said that Mr. Grant has kicked the issue into ZBA's court.

Mr. Seegel said that he drove by the property but did not get out to look at every single stud that was replaced.

Ms. Khoory said that the Board approved half of the first floor to come out. Tim said that by the time they put the headers in there was really nothing left. He said that what was left was completely rotted. He said that he would never in good conscience leave those walls. He said that it was the right thing to do for the house.

Mr. Seegel said that, as a matter of law from a Zoning standpoint, once you take the walls down to the first deck, it is a different situation from what had been presented to the Board previously. He said that it is almost like a total demolition.

Mr. Levy said that this is either a request to modify a previously issued permit, which has to be properly noticed or there should be an appeal from the Building Inspector's stop work order. He said that the determination of whether the structure complies with the previous permit is initially the Building Inspector's. Mr. Seegel said that he agreed. Mr. Levy said that in the past, Petitioners have come before the Board to request to make a small change at a Business Meeting. Mr. Seegel said that this meeting was called in response to neighbors' complaints. Tim said that they did not change the structure. He said that they only changed the integrity of the walls. He said that they typically do that as a field change with the Building Inspector. Mr. Seegel said that it is fine if it is a house that is not being built under a variance or special permit.

Mr. Levy confirmed that this was published as a public hearing. He said that if abutters have concerns, they should have an opportunity to discuss them. Mr. Seegel said that since it was not published, the Board cannot make a ruling. He said that the Petitioner will have to go back to see the Building Inspector and ask him to issue a formal stop work order so that it can be appealed to the Zoning Board of Appeals at a public hearing. Ms. Khoory said that the Building Inspector told them to follow this procedure. She said that the job has been stopped for two months. She said that the Building Inspector recognizes that there have not been changes since ZBA approval. Mr. Seegel said that the Board did not receive anything from the Building Inspector. He said that the Board is present at the public meeting because of neighbors' complaints. Mr. Khoory asked about the nature of the complaints. Mr. Seegel said that when the original application was filed, neighbors came to look at the plans. He said that when they saw walls coming down on the first floor level, they realized that was not in the original plans. He said that neighbors called the Building Inspector and the Zoning Office to complain. He said that the Board was asked to put this on a business meeting schedule to determine whether the work has exceeded what was granted in the original decision. He said that the Building Inspector allowed the Petitioner to close the house in to make it weather tight and then they had to stop. He said that the Board does not have anything from the Building Inspector. He said that if the Building Inspector has told them to stop, they need to get something in writing. He said that Ms. Khoory will have to make a formal appeal of the stop work order. He said that gets appealed to the Zoning Board as a separate matter. He said that the appeal should say that she is appealing the stop work order and, in the alternative, for approval of the modification to take out more of the original building was intended because rot and other things were found.

Mr. Sheffield asked Ms. Khoory if the Building Inspector had given her anything in writing. Ms. Khoory said that everything was verbal. He said that he would not send a note because he had already told the contractor. She said that the Building Inspector told her that she needed to go to ZBA to make sure that

they had not exceeded the parameters of the original decision. He told her that if the ZBA was okay with what had been done, she would be allowed to proceed with the work.

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

Michael D'Ortenzio, 40 Russell Road, said that he is one of the abutters who expressed concern. He said that he had a few questions. He asked about Total Living Area plus Garage (TLAG). He said that the Planning Board had recommended a deferral for the variance that was granted in 2016 until further information could be sought about TLAG. He said that may not be relevant because the variance was granted. The Board said that it is not relevant to this issue. Mr. D'Ortenzio said that he had questions about process. He asked if there would be a different legal standard if the house was torn and rebuilt versus the renovation of a one-story addition. He asked if there would be a higher standard with respect to impact to the neighborhood. Mr. Seegel that it would not because variances had been issued for the property years ago. He said that when they come before the Board now, they come before the Board to modify a variance. He said that has a higher standard than seeking a special permit. He said that they complied with all of the Board's requirements. He said that they ran into a problem with rot. He said that the contractor stated that the best way to deal with that under the Building Code is to remove the rotten studs and replace them.

Mr. Levy asked if Mr. D'Ortenzio was concerned that any of the changes would impact him or the neighborhood. Mr. D'Ortenzio said that he had not had a chance to familiarize himself with the specifics of the changes. Mr. Seegel said that they have not changed anything. He said that they were supposed to only go down to the second floor level, replace the windows on the first floor and then build up the floor above. He said that when they started taking out the old windows, they discovered rot in the wood. He said that contractor determined that it was not structurally safe, so he took it upon himself to replace some first floor walls as well. He said that was not in the original plans that came before the Board. He said that a question is whether the Board's decision would have been any different. He said that he sat at the previous hearing and did not think that the Board's decision would have been different.

Mr. Levy said that if the Building Inspector is looking for some type of advisory opinion, this does seem to be di minimis. He said that it will have no impact on the neighborhood.

Mr. Redgate said that he sat for the original decision. He said that he visited the site. He said that it is a brand new home. He questioned whether the Board would have looked at it differently with the understanding that it was going to be a teardown and was seeking a variance. He said that he would have liked to ask the Building Inspector what he would have done if there was no special permit or variance from ZBA on a property that was conforming and somebody did not comply with what they had given the Building Inspector for a demolition permit. He said that there was a plan in the application packet to the Board that showed a piecemeal demolition plan. He said that he would have liked to have asked Mr. Grant what he would have done if the entire house was razed and rebuilt.

Mr. Levy said that the Board is not going to make the Petitioner tear down the house.

Mr. Seegel discussed having the Board make a determination, based on what it had seen, that the changes are di minimis. Mr. Levy said that the Board could issue an advisory opinion to the Building Inspector and he can make a decision about what he wants to do.

Mr. Redgate asked if there is language in the decision about maintaining the walls. Mr. Sheffield said that the plans show about 50 percent of the walls being removed. Tim said that they did not replace the whole first floor. He said that the garage level is existing walls with the exception of the approved bump out at the front. He said that they had approval to take out sections at the deck level for some exterior and all of the interior walls. He said that when they went to build the window headers, there was really nothing left. He said that they did not touch the foundation area on the first floor at the garage level. He said that on the deck level, instead of leaving the old walls, they replaced them. Mr. Sheffield confirmed that no square footage was added.

Linda Natansohn, 44 Russell Road, said that she lives next door. She said that it is a quiet neighborhood with modest sized houses. She questioned whether the Board would have looked at this differently if all the walls were to come down. Mr. Seegel said that the Board authorized the renovation. He said that the fact that they discovered some structural problems in the walls as they were doing the work is something, in his opinion, that the Building Inspector should have authorized as a change. He said that it appeared to him that this should not be back before the Zoning Board. He said that the house will be the same square footage as what the Board approved and will look like the plans that were authorized. He said that the only thing that is different is that there are some new walls in place of structurally unsound walls. Ms. Natansohn said that she does not know what gets measured in terms of height of the walls. Mr. Seegel said that the Board has to be fair to everyone. He said that the Petitioner has been held up for some time. He said that the neighbors are concerned about what is happening. He said that, from what the Board can determine, there has been no change in the size of the house. He said that the second floor walls had to come down because they were not structurally sound. He said that it is a strange lot. He said that the house was usually built with 2 by 4 walls. He said that today it is more environmentally proper to build with 2 by 6 walls for more insulation. He said that when the contractor took the 2 by 4 walls down, he replaced them with 2 by 6 lumber. He said that it is environmentally better but not what was in the plans. He said that if the Board was to make the finding that it is a di minimis change and everything else is the same as what the Board approved, everyone should be able to go away happy. He said that the neighbors were notified in 2016 for the original petition. He said that the Board is not going to revisit that. He said that the time for the neighbors to speak was at the 2016 hearing. He said that the Board is here for a very limited issue. He said that the issue is whether what the Board approved was changed. He said that it appears that did not happen. Ms. Natansohn said that the neighbors wanted to be sure that there was no expansion and that the setbacks are as they should be.

Mr. Sheffield said that his understanding is that everything is the same except for the dimension of the studs.

Mr. Levy proposed that the Board advise the Building Inspector that, provided that there is no change in the footprint or any increase in the square footage or height of the house, or any dimensional change, that the Board determine that the change is di minimis. The Board agreed that the change is di minimis and the Building Inspector shall be notified of its opinion.

PUBLIC HEARING

ZBA 2017-14, ANNE R. BAE, 36 BROOK STREET

Presenting the case at the hearing was Anne Bae, who said that she is the owner of 36 Brook Street. She said that the request is for renewal of a special permit. She said that there is a history to the house that is described in the binder that she submitted. She said that the house has 10 bedrooms and five and a half baths. She said that it has a main house and a house in the back. She said that is the way that it was when they bought the house. She said that they rent out the back apartment.

Mr. Sheffield said that his understanding of the conditions of the special permit include that Ms. Bae is a resident of the property. He asked if she currently lives there. Ms. Bae said that she lives there part of the time. She said that her daughter lives there full time. She said her belongings are still there. She said that she is in the middle of a transition. She said that she is trying to figure out whether she should sell the house. She said that her daughter is there with her husband and they just had a baby.

Ms. Bae said that the main house has seven bedrooms and four bathrooms. She said that it was a lot of house to be in when her husband passed away. She said that she asked her daughter to move in to help fill up some of the rooms.

Mr. Levy said that the application package was well put together. He said that there is a condition that requires that Ms. Bae live in the house. He said that the Board typically inserts that condition. He said that it is the Board's view that the property should comply with Zoning to the extent that it can. He said that the Planning Board indicated that Ms. Bae ceased living in the house, as evidenced by neighbors and the Assessor's data base. He said that it a violation of the condition. He said that it is a big house and is probably not inappropriate for its use. He confirmed that Ms. Bae is still the owner of the house. Ms. Bae said that the house is still in her name and her daughter is listed as a trustee on the trust. Mr. Levy confirmed that the property was conveyed from Ms. Bae to a trust. He said that a trust is different in that it cannot cease to exist as a person can.

Mr. Sheffield asked if Ms. Bae's daughter intends to continue living in the house. Ms. Bae said that they have been priced out of buying a house. She said that she may be there for quite a while. Ms. Bae said that she did a lot of work to the house. She said that it is in very good condition. She said that her daughter's family is young and they do not have money for a down payment on a house.

Mr. Levy asked who occupies the other unit. Ms. Bae said that it is a man who is a CEO of an insulin company. Mr. Levy asked if there is a lease or if he is a tenant at will. Ms. Bae said that he has a lease. She said that he has a home in Connecticut. She said that he stays in the apartment during the week when he is working. Mr. Levy asked about the term of the lease. Ms. Bae said that it is a self-extending lease. She said that the first year the term was for one year and it has been self-extending since then. Mr. Levy asked how long the tenant has been there. Ms. Bae said that it has been approximately two years. She said that they had a family living there before and it was much busier. Mr. Levy asked about the number of bedrooms in the rental unit. Ms. Bae said that there are three bedrooms. Mr. Levy confirmed that the tenant lives there by himself.

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

Peter White, 10 Marvin Road, said that he was present at the public hearing six years ago and had concerns about the request for the homeowner to move into the back unit and rent out the front unit. He said that if this was a simple renewal and nothing had changed, he probably would not be present at the

hearing. He said that one of the conditions is that there by no conveyance. He said that there have been two conveyances. He said that Ms. Bae has admitted that she no longer lives there, which is another breach of conditions. He said that there was a comment on the application for the renewal that said that if the house was sold it would be listed as a single family with an in-law apartment. He said that is precisely what the neighbors do not want. He said that they do not want this to somehow grandfather into a buyer saying that the property was purchased with an in-law apartment that can be used as a rental property. He said that the fundamental problem is that the special permit has been breached. He said that the property listing in the town has Anne Bae living at 25 Strawberry Hill Road in Natick, Massachusetts. He said that the special permit requires her to be an owner/occupant.

Mr. Levy asked Mr. White what his objection is. He asked if there have been any problems there with noise, excessive traffic or something specific. He asked if the use is offensive. He asked if there was a reason that Mr. White thought that it would be more advantageous to turn this back to a single family house. Mr. White said that the uniformity of the Zoning of the neighborhood should be retained. He said that he was concerned about the intent of extending this to another family. He said that now it is basically a two family rental unit. He said that Ms. Bae is now letting her daughter and family live there and rent it from her and she is renting to the CEO. He said that she is collecting rent for both units. Mr. ??? said that he wished that he could put an apartment over his garage and rent that out because you get really good income. He said that part of this was originally allowed for some financial reason. He said that if they have been collecting \$3,000 to \$4,000 a month in rent, they have earned a fair return on any renovations that they might have done. He said that said that it is in way better condition in today's market and would sell for a much higher value than the assessed value. He said that if Ms. Bae is going to live there and nothing is changing, he would not have any concerns.

Ms. Bae said that an appraiser told her that 36 Brook Street should be described as a single family with an in-law. She said that architecturally it is not a two-family. She said that it looks like a single family with an in-law. She said that was how she was told to describe it. She said that her daughter does not pay rent.

Mr. Sheffield asked about the building that is a few hundred feet away that is sheathed in green. Ms. Bae said that the second house on Brook Street appears to be a couple of townhouses. She said that it is very big and imposing.

Ms. Bae said that she takes very good care of her property and she wants her children to enjoy it. She said that all of their lives they were bothered and stressed by the cost of the house and the watchfulness of the neighbors. She said that she is thinking of moving into the back unit but the situation is not right for her to do that. She said that she is not sure if her daughter's family will want to stay. Ms. Bae said that she is in transition and is not sure of her plans yet.

Mr. Levy said that, according to the Planning Board, the house was used as a two-family from 1890 to 1965. He said that from 1965 to 1985 it was used a single family, so it lost its grandfathering.

Mr. Levy said that he was disappointed that Ms. Bae did not come when the facts changed. He said that the property was conveyed. He said that it appears that Ms. Bae is not living there and saying that she does live there part time seems a little disingenuous. He said that, all in all, it is unfair to have a tenant that will have to move out. He said that the use does not seem to be offensive to the neighborhood.

Kit Bowry, 42 Brook Street, said that the property is beautifully maintained. She said that the present tenant is quiet. She said that the prior tenant, which was a family, was intrusive. She said that she had to put up a fence to protect herself. She said that she has no problem as Peter White said, with the conditions in the previously granted special permit being continued that it be an owner occupied residence. She said that Ms. Bae has more than one home and does spend time at different places. She said that it is not terribly important to her that Ms. Bae spend 100 percent of her time there. She said that to protect the neighbors in a single family residence neighborhood and the property values that they have, the special permit should not be modified or changed so that this becomes two permanent income rental units in the future. She said that the title of the property has been conveyed to a trust where the daughter is a beneficiary of the trust. She said that other people probably are beneficiaries of the trust, so that if Ms. Bae was not to live there, other people could stay in the house. She said that the title could be conveyed again and this could go on for a long time. She questioned whether there is a financial hardship here. She said that it has not been assessed or proven that there is one. She said that it would be good if Ms. Bae moved back into the house at some point and that should be an option available to her. She said that her big concern is that this not be changed so that the conditions of the house will change in the future. She said that the Board owes it to the other members of the neighborhood who are single family residences to protect their interests as well. Mr. Levy asked Ms. Bowry what harm she would have by having it continue with Ms. Bae's daughter living there and a single tenant. He asked how that is detrimental to Ms. Bowry's property value or lifestyle, as opposed to a single family house with a more conventional family with four children and a dog. Ms. Bowry said that there is no one to guarantee that is going to happen unless the Board wants to insert a condition that one of Ms. Bae's children can live there. She said that all of Ms. Bae's children have lived there at some point. She said that Ms. Bae has four children. She said that when the special permit was first issued in 1993, it was granted to allow them to keep the family and the children in the house. She said that was 24 years ago. She said that Ms. Bae's children are successful and work. She said that the daughter who lives there now is a vice president of a bank. She said that they are quiet. She said that she just does not want this to become an income property for the trust. She said that an in-law apartment is not allowed in a single family residence district. Mr. Levy said that it depends on the definition of an in-law apartment. Ms. Bowry said that she spoke with the Planning Board and they confirmed that the Zoning laws do not allow that. She said that she was going on what she was told.

Mr. Levy said that his feeling is that it is kind of draconian to require the tenant to have to leave. He said that it does not appear to have an adverse impact on the neighborhood. He said that he could support an extension and a modification of the special permit which requires Ms. Bae's daughter to live there rent-free so that it does not become a rental property. He said that if Ms. Bae's daughter no longer resides on the property, it would result in expiration of the permit. Mr. Sheffield said that it could be the daughter or any of the other children if the property is conveyed.

Mr. Levy said that the previously granted special permit was subject to 14 conditions. He said that Condition #2 would change to the property owners, Anne Bae or one of her children, occupying one of the two units for the duration of the special permit at no remuneration. He said that there is also a condition that the premises be inspected by the Zoning Enforcement Officer within two week period prior to the filing of a renewal. He asked if that happened. Ms. Bae said that Mr. Grant came by yesterday. Mr. Levy said that the report of the inspection shall be submitted. He said that has not happened. Victor Panak, Planning Department, said that Mr. Grant inspected the property yesterday as opposed to two weeks before renewal. He said that Mr. Grant sent an email to him that summarized the results of the

inspection. He said that email was forwarded to the Board. Mr. Levy said that Condition #8 would have to be modified to state that a son or daughter and partners shall be permitted to live there as well. He said that condition may not be relevant any more. He said that Condition #10, the conveyance of the property by the current owners, Frank and Anne Bae, can be amended to be the Trust that owns the property.

Mr. Redgate read the email from Mr. Grant regarding the inspection.

Mr. Sheffield said that preventing the potential of this becoming a full rental property is at issue here. Mr. Levy moved that the Board grant renewal of the special permit, subject to a condition that a family member occupies one of the units at no remuneration and subject to the conditions that are currently in effect, as modified at this public hearing. Mr. Redgate seconded the motion. The Board voted unanimously to grant renewal of the special permit.

ZBA 2017-15, STEPHEN & LAUREL LYLE, 156 WALNUT STREET

Presenting the case at the hearing was David Whitney, Architect, representing Stephen and Laurel Lyle, the Petitioner. Also present was Stephen Lyle.

Mr. Whitney said that the proposal is for an addition at the back of the existing nonconforming house that does not meet front or side yard setbacks. He said that the proposed addition will meet all Zoning requirements except for the side yard setback. He said that they tried to be as respectful as possible. He said that it will not come as close as the existing house. He said that it is stepped back somewhat. He said that the existing house does not meet front yard setbacks but they will not be doing any work at the front. Mr. Levy said that the Board is required to identify the nonconformities. He said that the property has two front yards on Walnut Street and Walnut Place. He said that the setback to the east is also nonconforming. He said that it looks like only the rear yard setback is conforming. Mr. Whitney said that is where the addition will be.

Mr. Sheffield said that this is one of the oddest lots that he has seen in town. Mr. Levy said that it is almost like a reverse pork chop.

Mr. Redgate said that there is a ranch style house much lower than this house. He asked about the driveway. Mr. Whitney said that it is a right of way. Mr. Sheffield said that if it is a legal right of way, it should be shown on the survey.

Mr. Sheffield said that there is a reasonably extreme slope to the lot. He said that the addition will be at the rear of the house and will be one story lower than the current gable. He said that looking at the house from the rear, the addition will not visually increase the scale of the house. He asked if a Total Living Area plus Garage (TLAG) was done. Mr. Levy said that it is exempt from Large House Review (LHR).

Mr. Levy said that it looks like it is holding the record for the number of permits. Mr. Lyle said that those permits were granted before they moved in. He said those permits were from a time when the house was split into two units. He said that the permits for a two-family are long in the past.

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

Mr. Sheffield said that the Planning Board expressed concern that it will be close to the TLAG threshold. He said that they suggested that the petition be deferred until TLAG calculations are submitted.

Mr. Levy asked how many square feet will be added. Mr. Whitney said that they will be adding 638 square feet of finished space. He said that the existing living space is 2,815 square feet. He said that the total square footage of living space will be 3,453, including the basement and the attic but not the garage. He said that the TLAG threshold for LHR in a 10,000 square foot district is 3,600 square feet. Mr. Levy discussed inserting a condition that approval was subject to submittal of a TLAG Affidavit that shows that the square footage is less than 3,600. Mr. Redgate said that the right of way must also be shown on the survey.

Mr. Levy moved and Mr. Redgate seconded the motion to grant the special permit, subject to the conditions that a revised plot plan showing the driveway TLAG Affidavit that concludes that the TLAG is less than 3,600 square feet shall be submitted. Mr. Sheffield said that the existing nonconforming structure has less than required front yard, left and right side yard setbacks. He said that the proposed construction shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The Board voted unanimously to grant the special permit.

ZBA 2017-16, JONATHAN & KATHERINE GERBODE-GRANT, 239 WESTON ROAD

Presenting the case that the hearing was Jonathan Gerbode-Grant, property owner and Petitioner. Also present was Renée Mierzejewski, Architect.

Mr. Levy said that there is a lot of information on the plot plan. He confirmed that the property is located in a 10,000 square foot district. Ms. Mierzejewski said that the side yard setback is nonconforming. Mr. Levy said that the two nonconformities are the size of the lot and the side yard setback.

Mr. Sheffield said that the survey shows 34.2 feet to the new work from Avon Road. He said that the bump out on the existing property on the corner is closer than that. Mr. Gerbode-Grant said that it is 28.5 feet. Mr. Sheffield said that should be noted on the survey. He said that it is an existing nonconformity. Mr. Redgate said that it would be considered a front yard. Mr. Sheffield said that it is a corner lot. Mr. Levy asked if the 500 Foot Rule is implicated since it will be coming closer to the street. Mr. Redgate said that the existing structure is closer to the street.

Mr. Sheffield said that the porch shown on the survey is called steps but is actually a porch with a cover. He confirmed that the size is approximately 48 square feet. He said that the old driveway is shown on the survey, not the new driveway. He said that should be corrected. He asked if they will be leaving the brick. Ms. Mierzejewski said that they will not. Mr. Sheffield said that should be removed from the plan. He said that the existing dimension and the dimension from the steps to Avon Street, the new driveway and removal of the bricks should be shown on the survey.

Mr. Redgate asked how much of the proposed addition will be in the side yard setback. He said that the existing condition at its closest to the lot line and the dimensions to the proposed addition appear to be close. Mr. Gerbode-Grant said that the existing house is 11 feet from the side lot line. He said that the closest dimension to the side lot line for the proposed addition will be 13 feet. Mr. Redgate asked if any consideration was given to minimizing the amount of addition in the side yard setback. Mr. Gerbode-

Grant said that looking at the front elevation of the house, to maintain a look that the addition was meant to be there, instead of bumping it more towards Avon Road, if they were to achieve the side yard setback, to get a car into the garage they would have to bump the garage and the face of the house towards Avon Road. He said that he and his wife recently moved there with their two year old. He said that they drove around the neighborhood to look at houses with additions. He said that their intent is to live here for a long time. He said that they wanted to have a place that looked like a home that was built with the architecture of the original house in mind. He said that to achieve that, this was the best option. He said that it does not look like a chopped up house. Ms. Mierzejewski said that they did not want to push the garage forward. Mr. Redgate asked if the dimension of 30 feet width is driven by the size of the garage. Ms. Mierzejewski said that it is. She said that they were trying to keep it within the edges of the existing house.

Mr. Redgate asked if the Petitioner had discussed the plans with the neighbors. Mr. Gerbode-Grant said that they had.

Mr. Sheffield said that it struck him that the addition has a much different character from the rest of the house in terms of its roof configuration. He said that the elevation of the house that is closest to the side property line is all in a single plane. He said that the rectilinear shape and the gable configuration directly abuts directly into the hip roof without a break in plane, which is a little surprising. He said that there is some detail to try to break up the façade a little bit but it is still one single plane. Mr. Gerbode-Grant said that if you stand in the neighbor's yard, there is a set of trees past the house where the sun comes up over them. He said that they looked at extending the hip roof but it would go up so high that the sun would be blocked. He said that they wanted to have a roofline with full dormers without overshadowing their neighbor's property.

Ms. Mierzejewski said that they gave a lot of consideration to the character of the neighborhood. She said that they were trying to be friendly neighbors without being egregious and maximizing everything. Mr. Levy said that the Total Living Area plus Garage (TLAG) threshold was exceeded by seven square feet. Mr. Gerbode-Grant said that the existing attic space will be filled with a heating unit and will be unusable space. Mr. Levy said that it will be a significant house. Mr. Sheffield said that they do have enough room on the Avon Road side to make a shift in the plan to cause a break. He said that it would create a shadow line between the existing and the new. He said that nothing would be harmed in the floor plan. He said that the proposed façade would be long and flat. Mr. Gerbode-Grant said that they can achieve the break on the side façade using an aesthetic piece of trim that breaks up the existing house from the addition.

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

Martha Cunningham, 243 Weston Road, said that she lives one house away next to the McAdams. She said that she has lived there since 1963. She said that the Petitioner would like to demolish the existing garage and construction a new addition on their property, consisting of a two-garage, a master suite and an office. She said that she believes that the project is much too large, tall and dense. She said that the existing house has less than required side yard setbacks. She said that she is opposed to the Zoning Board granting a special permit/finding for a project of this size on a small lot.

Mr. Redgate said that the First Floor Plan shows a room behind the garage. He said that it is not labeled. He asked what makes up the difference between the back wall of the garage and the wall that is closest to

the setback on Plan A101. He said that there is a note that points to the garage door openers. Ms. Mierzejewski said that it is part of the garage. Mr. Gerbode-Grant said that he plans to have a cycling workshop. Mr. Redgate confirmed that it will be for extra storage space.

Mr. Sheffield asked about the length of the façade that faces the adjacent property. He said that it appears to be 62 to 63 feet long. Ms. Mierzejewski said that it is 59 to 60 feet long. Mr. Gerbode-Grant said that there is a side entrance on that wall that they will keep as the original structure.

Mr. Redgate said that he would like to see more effort to minimize the side yard setback but he also thinks that the addition is situated nicely in the yard.

Mr. Sheffield said that he would be a little happier architecturally if there was an offset on the north side but does not want to design the addition for the Petitioner.

Mr. Sheffield read the Planning Board recommendation.

Mr. Redgate moved and Mr. Levy seconded the motion to grant a special permit, making findings that the lot is nonconforming as to size at 9,761 square feet, has less than required left side yard setback at 11 feet, has less than required front yard setback on the Avon Road side at 28.5 feet. He said that the proposed setback will be 34.2 feet. He said that the proposed addition shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. Mr. Sheffield said that the decision is subject to condition that a revised survey be submitted. The Board voted unanimously to grant the special permit.

ZBA 2017-18, 3 STRATHMORE ROAD LLC, 3 STRATHMORE ROAD

Presenting the case at the hearing was David Himmelberger, Esq., representing 3 Strathmore Road LLC, the Petitioner. He said that the request is for a special permit to raze and rebuild a single family dwelling. He said that it is a pre-existing nonconforming lot due to inadequate lot size at 7,526 square feet in a district in which the minimum lot size is 10,000 square feet. He said that the existing structure is also nonconforming due to setback issues. He said that the left side yard setback to the detached garage is 8.1 feet and what would nominally be termed a rear yard setback but is treated as a side yard setback here is 9.8 feet, where 20 feet are required.

Mr. Himmelberger said that the Applicant has proposed to construct a two-story single family home that will respect the 20 foot side yard setback on the left and the 30 foot front yard setback. He said that they will increase the setback at the rear from 9.8 feet to 10.6 feet. He said that there will be an intensification of the nonconforming structure as it will be a larger replacement dwelling. He said that they will eliminate the nonconforming garage while slightly improving the rear/side yard setback. He said that they believe that the design of the house is attractive and seeks to minimize mass with the roof treatment and the windows over the garage. He said that there is an issue with respect to two air conditioning condensers to be placed on the Weston Road side of the house. He said that the purpose behind the Zoning Bylaw that condensers not be placed in the setback is to avoid disturbing neighbors. He said that it is the best side to place them because it abuts Weston Road and would be tucked against the chimney bump out.

Mr. Himmelberger said that the lot is shaped in such a way that it is virtually impossible to conform with all of the setbacks because the lot is only 65 feet deep. He said that with the 30 and 20 foot setbacks, only a 15 foot deep house would comply. He said that if the lot was square, you could build a larger house with a compliant footprint.

Mr. Himmelberger said that the Planning Board is of the opinion that you cannot raze and rebuild a noncompliant structure due to abandonment issues. He said that he believes that this Board disagrees with that. He said that he cited in his cover letter a similar case at 6 Fairbanks where this Board granted similar relief last summer. He said that the Board allowed an improvement of the setbacks and did not impose a requirement that all of the setbacks be compliant. He said that they are seeking similar relief here. He said that there will be improvement of the side and rear yard setbacks, albeit with a two-story garage. He said that the house that is closest in proximity to it on Weston Road has a peak that is approximately 26 feet high. He said that the eaves on the proposed house are less than that and the total height of the house will be approximately 34 feet. He said that the other house on Weston Road is about six feet to the property line. He said that the way that the proposed house will be situated will not have significant impact on it. He said that the Petitioner is requesting a finding that the proposed structure shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Mr. Levy asked which Board members sat at the hearing for 6 Fairbanks. Mr. Himmelberger said that it was Mr. Becker, Mr. Levy and Mr. Redgate. Mr. Levy said that the Board usually requires compliant setbacks for structures that are torn down and rebuilt. Mr. Redgate said that 6 Fairbanks was a little different from this. Mr. Himmelberger said that the Board allowed less than required side yard setbacks at 6 Fairbanks. Mr. Levy asked if Mr. Himmelberger knew of any other cases where the Board allowed tear down and rebuild with noncompliant setbacks. He said that the Board typically requires compliant setbacks or the petition goes to a variance. Mr. Himmelberger said that the rationale that drove that thinking was that there was an abandonment by virtue of the tear down. He said that he was able to present at the Fairbanks case the fact that abandonment is a concept that talks about some sort of disuse over a period of time. He said that there are no cases that speak to abandonment occurring when there has been a tear down as part of a permitting process. Mr. Levy said that there was a situation a number of years ago where the property owner tore down the house and then came to the Board for a permit. Mr. Himmelberger said that situation is different. He said that it is different from asking for the permit before tearing the house down.

Mr. Levy said that the Board tries to get properties as conforming as possible. He said that this proposal is to clear cut the lot to build a house that will not meet setback requirements. He said that it is a small lot. He said that there may be no other way to site the new house. He discussed the possibility of a variance. He said that there may be an argument for the shape of the lot. Mr. Himmelberger said that he believes that, under the bylaw and case, there can be a finding that there is an intensification of the nonconformity in terms of the size. He said that the nonconformities here are being reduced in terms of the side yard setbacks. Mr. Levy said that the bulk of the house will not be reduced. He said that it is one thing to have a small house that violates setbacks versus a large house that violates setbacks. He said that there is a lot more square footage of house that is violating the setback than currently exists. Mr. Himmelberger said that one of the setbacks will be improved.

Mr. Levy said that he does not like setting precedents that come back to haunt him. He said that he did not remember the case or the circumstances at 6 Fairbanks. Mr. Redgate said that it was different

circumstances. He said that it had grading and sloping issues and was very narrow. He said that it was a much smaller home. He said that this is a very large home on a very small lot. Mr. Himmelberger said that the difference was that 6 Fairbanks was that the setbacks were maintained.

Mr. Redgate asked if the setback for the abutter on Weston Road is six feet. Mr. Himmelberger said that it is less than 10 feet.

Mr. Levy asked if this will be a spec house. Mr. Himmelberger said that the builder is building it to sell it. He said that the Applicant owns the house.

Mr. Sheffield said that there are a few minor architectural tweaks that might help. He said that it is a large house on a very constrained site. He said that the depth from Strathmore to the side lot line is only 65 feet. He said that it is a four bedroom house. He said that the only architectural suggestion that he could make would be on the side elevation at the garage that would cause an encroachment into the front yard setback of a modest couple of feet. He said that it would be something to break up the façade. He said that it is a very big house.

Brett DeMayo, owner, 3 Strathmore LLC, asked if it would help if they reduce the dormer size and reduce the square footage in the third floor and lower the roof line down on the right side of the house. He said that they could remove the dormers where the windows are at the center of the house and bring the roof line down on the right side and fix the proportion. Mr. Sheffield confirmed that Mr. DeMayo was discussing the view shown on Plan A1.0 from Strathmore Road. He said that the change that Mr. DeMayo discussed in conjunction with an offset for the garage and a major break in the roof line at the rear façade might help but it would cause an encroachment into the front yard setback by a few feet. He said that it would totally change the scale of the house. He said that the garage on the right hand side could be pushed toward Avon Road to enhance the scale of the house architecturally, along with the changes that Mr. DeMayo suggested for the dormers. Mr. DeMayo said that the garage is set back on the Strathmore side of the house. He said that it is in line at the rear of the house. Mr. Sheffield said that there is only one dimension on the site plan. Mr. Himmelberger said that Floor Plan 2.0 shows that façade broken up with recessed entry. Mr. DeMayo said that the entry is set back from the front of the house.

Mr. Levy said that he was not sure that the Board can get to design issues. He said that the house will be almost three times as large. He said that it will go from one to two stories. He said that it is a small lot. He said that he was not convinced that a special permit could be granted to allow a tear down and rebuild with nonconforming setbacks. He said that it will go from a 1,200 square foot house to a 3,200 square foot house. Mr. DeMayo said that it will be 3,200 square feet if they keep the roof line and the third floor space the same. He said that it would go down to 2,500 square feet with the suggested changes. He said that the existing house is a 1.25 elevation. Mr. Himmelberger said that the depth of the lot is 65 feet. He said that the Zoning Bylaw says that if there is an intensification, there needs to be a finding. He said that the bylaw does not require that every new construction on a nonconforming lot be dimensionally compliant, nor has this Board held that in the past.

Mr. Redgate said that this greatly intensifies a nonconformity. He asked about the bump out along the rear elevation. Mr. Sheffield said that it does not have a foundation and can extend out two feet. Mr. DeMayo said that it is two feet. He said that is where the kitchen counter is. Mr. Redgate said that it will

put the kitchen window another two feet closer to the property line. Mr. Sheffield said that although the bylaw does allow it, it may not be advisable.

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

Allie Kelly, 245 Weston Road, said that she is the abutter to the rear of the property. She asked that the special permit be denied. She said that there is no compelling reason or need for overbuilding other than convenience of profit. She said that it would have a significant detrimental effect on the use and enjoyment of her property. She said that the proposed house would be located 7.6 feet from the property line. She said that there will be a massive impact on her privacy, light source, view and general openness. She said that she has two young children. She said that it will be an extensive building construction process with lots of dust and noise. She said that she faces existing challenges with runoff and drainage from the property onto hers. She said that she did not see anything in the proposal to address that situation. She said that she assumed that the proposed structure will exacerbate the problem. She said that she recognizes that this will replace a dilapidated home but the egregious overbuilding, and insensitive increase in mass, bulk and height erodes the aesthetics of the streetscape. She said that the nonconformity of the proposed structure is not a modest size, as the Petitioner states. She said that it will be substantially more detrimental to the neighborhood. She said that the Petitioner stated that the house will be located across from newer homes of larger proportions. She said that, while this is true, the houses on the same side of Weston Road are of modest size. She said that her house is approximately 1,600 square feet. She said that the abutting three properties are not significantly larger than that. She said that they are all within the 2,000 square foot range. She said that the proposed structure will be 21 percent above that, which is a massive increase. She said that it is a big house on a very small lot. She said that the Petitioner reminded the Board that a special permit was granted for a similar circumstance at 6 Fairbanks but that was a completely different situation. She said that there was not a fire hazard caused by such a massive construction in such close proximity to another home. She said that setback rules serve many purposes and each situation is unique. She said that the small size of a lot should never excuse overbuilding what the law would otherwise allow just so the owner can acquire as much living space as possible and certainly not for profit. She asked that the Board deny the special permit.

Martha Cunningham, 243 Weston Road, said that she has lived in her house since 1963. She said that the house has not been abandoned. She said that the man has been trying to sell it for a considerable amount of time. She said that his daughter was living off and on. She said that the Petitioner would like to change the footprint of the existing home. She said that the project is much too large for the parcel. She said that the size of the lot is very small. She said that there is an existing one floor ranch house with an unattached garage. She said that the plan is to demolish the existing house and garage and build a much larger house. She said that they could build within the existing footprint but that does not fit the size that they would like. She said that she is very much opposed to the Board granting a special permit for this type of a home on a very tiny lot.

Mr. Levy said that he agreed that it is too much house for the lot. Mr. Sheffield said that he had come to that conclusion as well.

Mr. Himmelberger asked if the Board would entertain allowing the matter to be continued to the next public hearing. He said that the Petitioner would submit revised drawings prior to the hearing to address some of the concern. Mr. Levy said that a completely different panel will be sitting at the April 6, 2017

public hearing. He said that the Board could hear the petition de novo. Victor Panak, Planning Department, said that the April 6th hearing agenda is already full.

The Board discussed allowing the petition to be withdrawn without prejudice. Mr. DeMayo said that he would look for some guidance, based on the dimensions of the lot. He said that he understands the height and the square footage and the setbacks. Mr. Sheffield said that it is not an easy problem to solve. Mr. Himmelberger said that the new structure would essentially sit on the existing footprint and adds the garage to the left. Mr. Sheffield said that it will be almost three times as high. Mr. DeMayo said that they are trying to get as much setback as they can for the size of the lot. He discussed moving the garage and gaining the proper setback on that side. Mr. Sheffield said that a concern of the Board was the bulk of the structure.

Mr. Levy asked about a renovation of the house. Mr. Redgate said that maintaining the rear makes sense because there is already a house there. He said that looking at the shape and geometry of the lot, it almost looks like the house wants to be forward and longer.

Allie Kelly said that moving the house toward Weston Road would have a direct impact. She said that there is a somewhat dangerous curve on Weston Road. She said that moving the house forward toward Weston Road would have a negative effect on that traffic area. She said that it would be a hazard. Mr. DeMayo said that he is fully in agreement with that.

Mr. Sheffield said that the Planning Board agrees with the Board's opinion and recommends that the special permit be denied, as requested.

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

ZBA 2017-19, FEDERAL REALTY TRUST, 195-197 LINDEN STREET (WELLESLEY BANK)

Presenting the case at the hearing was Tom Fontaine, President and CEO of Wellesley Bank. He said that the request is for renewal of the special permit for the drive-through at 195 Linden Street. He said that the drive-through has been there quite some time before Wellesley Bank occupied the space in 2002. He said that it is an important part of their business.

Mr. Levy asked if there have been any problems, issues or accidents. Mr. Fontaine said that there have not.

Mr. Sheffield said that the Planning Board noticed that one of the conditions discusses directional do not enter sign at the corner of the building. He said that the Planning Board stated that they felt that the sign was oriented incorrectly. Mr. Fontaine said that the bank does not control the sign. He said that the landlord, Federal Realty, controls the sign. He said that a representative from Federal Realty is not present at the hearing. He said that there have not been any safety issues with people coming in the wrong way. Mr. Sheffield said that he would like to have Wellesley Bank revisit that issue with the Developer to see if the issue can be resolved.

Mr. Redgate asked if the special permit is attached to the tenant. Mr. Levy said that the previous Petitioner was Linden Square, so it is not tenant specific. Mr. Levy asked Mr. Redgate if he was concerned about a different business using the drive-through. He said that he was comfortable inserting a condition that the drive-through is limited to a bank use.

Mr. Sheffield said that in the prior approval, there was discussion about pavement striping. He said that he did not see pavement striping. Mr. Fontaine said that the striping referred to a divider between the bank and the Volkswagen property. He said that all has been redone. He said that the way that they park the cars on the Volkswagen property, traffic cannot really stray too far.

The Board discussed renewing the special permit, subject to the same conditions. Mr. Levy said that Condition #2 was inserted for safety reasons. Mr. Sheffield said that should be revisited with Federal Realty.

Mr. Levy moved and Mr. Redgate seconded the motion to renew the special permit, subject to the same conditions. Mr. Sheffield said that the circulation patterns should not add to traffic congestion and driveways are not less than 50 feet from street intersections, new driveways, queuing lanes have a width of at least nine feet, storage capacity and separation are provided, it is compatible with surroundings, there are no issues with pedestrian safety, there are no noxious uses, and intensified use will not affect the character of the surrounding areas specified in Section XXI. The Board voted unanimously to grant renewal of the special permit. Mr. Levy asked that Mr. Fontaine see what can be done to fix the sign.

ZBA 2017-20, EDWARD & JULIA O'BRIEN, 36 RIVERDALE ROAD

Presenting the case at the hearing was Rick Leland, Contractor, representing Ed and Julia O'Brien, the Petitioner. Mr. O'Brien was also present at the public hearing.

Mr. Leland said that the request is for a second story addition and extension of a deck on a pre-existing nonconforming lot. He said that the lot is nonconforming on the side yard setbacks, the front yard setback, and the lot size.

Mr. Sheffield said that it is a nice neighborhood. He said that there has been a lot of activity there.

Mr. Levy confirmed that the footprint will not be changing.

Mr. Sheffield asked if there are any drainage issues on the property. Mr. O'Brien said that there are no issues that he is aware of. Mr. Sheffield said that some properties in that neighborhood had drainage problems.

Mr. Sheffield said that the nonconformities are the size of the lot at 9,090 square feet, a front yard setback of 25 feet where 30 feet is required and a left side yard setback of 19 feet and a right side yard setback of 15.8 feet where 20 feet is required.

Mr. Levy moved and Mr. Redgate seconded the motion to grant the special permit and make the finding that the proposed addition shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The Board voted unanimously to grant the special permit.

ZBA 2017-13, JOAN & JEFFREY TALMADGE, 30 MAYO ROAD

There was no one present at the public hearing. The Board discussed continuing the petition to March 23, 2017. Mr. Levy moved and Mr. Redgate seconded the motion to continue the petition to March 23, 2017. The Board voted unanimously to continue the petition.

As there was no further business to come before the Board, the hearing was adjourned.

Respectfully submitted,

Lenore R. Mahoney
Executive Secretary

DRAFT