

**ZONING BOARD OF APPEALS**

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WALTER B. ADAMS
DEREK B. REDGATE

June 6, 2019

7:30 pm

Juliani Meeting Room

Town Hall

Zoning Board of Appeals Members Present: J. Randolph Becker
David G. Sheffield
Walter B. Adams

ZBA 2019-51, ESTATE OF JOELLEN TOUSSAINT (SHAWNE H. TOUSSAINT) 84 WHITTIER ROAD

Present at the public hearing David Himmelberger, Esq., David Silverstein, Copper Leaf Development and Dustin Nolan, Architect.

Mr. Himmelberger said that ownership of the property has changed and should be amended to 84 Whittier Road LLC.

Mr. Himmelberger said that the request is for a special permit for a pre-existing nonconforming structure with less than conforming side yard setbacks of 11.1 feet on the right side and 16.3 feet on the left side. He said that the property is located in a SR15 district in which 20 foot side yard setbacks are required. He said that it is also located in a Water Supply Protection District.

Mr. Himmelberger said that this was originally contemplated to be a teardown and rebuild but after meeting with the Historical Commission, his client accepted their recommendation to preserve the main house and its façade. He said that all of the addition will be to the rear with some improvements to the front façade with a dormer to break up the massing of the existing garage roof and a small overhang over the front entry. He said that the ridge height will remain unchanged, and lot coverage will increase to 17.4 percent or 2,758 square feet on a 15,863 square foot lot. He said that all of the addition will be to the rear where there is a significant setback to the rear property line.

Mr. Nolan said that they kept the whole main structure of the house to the front. He said that they will rework some of the interior for a better floor plan. He said that they will maintain the existing garage and enclose the playroom/sunroom on the right side. He said that there will be a family room addition off of the rear, and behind the garage will be a new mudroom/entrance. He said that on the right will be a one story breakfast area with a deck. He said that the main mass of the addition will sit within the box of the house and kept more towards the center so that the view from the street will be limited, if at all. He said that on the second floor over the family room, the ridge will be lower than the main house. He said that area will be the master suite. He said that the proposed dormers above the garage will be on the left side. He said that there

is an existing screened porch on the second floor on the right side that they will enclose. He said that the dormers are pre-existing. He said that they will replicate the details that are on the house with a lot of it being replacement in kind. He said that they will maintain the rafter tails, replace windows, paint the brick, and keep or replace siding as required.

Mr. Adams confirmed that there are existing open porches on both floors.

Mr. Becker asked about TLAG. Mr. Nolan said that existing TLAG is 3,459 square feet, excluding the screened porches. He said that the total proposed TLAG will be 5,373 square feet, of which 337 square feet will be enclosed porches and 984 square feet in the attic, for a total addition of 1,915 square feet.

Mr. Himmelberger said that all of the addition will be fully conforming to setback requirements.

Mr. Adams asked about the patio. He said that he had not seen a site plan with landscaping but the plot plan indicated that there will be a patio. He said that the Board received a letter from a neighbor about the patio. He said that the renderings do not show how a patio would integrate with a sloped site. Mr. Silverstein said that the patio that is shown on the site plan is conceptual but where it is shown is generally where it is planned to be laid out. He said that outside of the new breakfast area will be a deck with stairs that wrap around and run down to a patio that will be on the upper level of the sloped back yard. He said that they will regrade the area around the stairs. He said that the plan is to have stepping stones down to a lower level at the walkout.

Mr. Becker said that the patio is not included in the definition of side yard, so there is no requirement for setbacks.

Mr. Himmelberger said that the neighbor to the right at 86 Whittier Road sits well back with a garage on what will be the patio side at 84 Whittier Road.

Mr. Adams asked about plans for landscaping. Mr. Silverstein said that his landscape plan will include screening between the patio and the sight lines to the neighbors to the right.

Mr. Becker said that at the rear of the proposed addition there are two retaining walls, with the one to the left clearly being less than four feet. He asked about the wall on the other side. Mr. Silverstein said that the plan is for both of the walls to be less than four feet. Mr. Sheffield said that the grade steps down. Mr. Silverstein said that the wall will grade down from the patio.

Mr. Sheffield said that the representation on Plan A6 is that it will be all grass from the sliding doors at the rec room. He asked if there will be paving at grade there. Mr. Silverstein said that there may be one piece of bluestone outside of that door but not a big patio there.

Mr. Sheffield asked about the dimension of the new work from the side lot line. Mr. Himmelberger said that they will clarify what that setback will be.

Mr. Sheffield said that Plans A6 and A8 show an uninterrupted façade of three stories. He asked that the architect consider adding an eyebrow over the sliding door so that there can be lighting in the soffit to protect the neighbors and diminish the bulk of the house from that angle. Mr. Himmelberger said that the house to the rear is 30 feet lower and at a distance.

Mr. Becker read the Planning Board recommendation.

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

Mr. Adams said that the Board received an inquiry from a neighbor about screening.

Mr. Adams moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to approve a special permit and make a finding that the proposed alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, subject to a condition that there be additional plantings between any proposed patio and the property to the right.

Mr. Adams moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to grant a special permit for construction in a Water Supply Protection District.

ZBA 2019-50 WELLESLEY FRIENDLY AID ASSOCIATION (CROSSROADS COUNSELING, INC.)
219 WASHINGTON STREET

Present at the public hearing was Linda Cohen, Crossroads Counseling, who said that they run a mental health clinic on the second floor of the Friendly Aid building. She said that they have had a special permit for a number of years. She said that they have been in operation for the past 25 years. She said that the request is for extension of the existing special permit.

Mr. Adams asked about the number of people that Crossroads Counseling provides support for. Ms. Cohen said that four partners in the service and three fee for service clinicians. She said that they operate five days a week 9 am to 8 pm plus a half day on Saturday. She said that she also runs a home based mental health counseling program that sees people in their own home. She said that the clinicians see approximately 10 to 20 clients a day. Mr. Adams asked how people find out about the services. Ms. Cohen said that they have a website and get referrals from social agencies that they work with. She said that they accept insurance and get referrals from insurance companies.

Mr. Sheffield confirmed the hours of operation, as listed in the conditions of the special permit.

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

Mr. Becker read the Planning Board recommendation.

Mr. Sheffield moved, Mr. Adams seconded the motion, and the Board voted unanimously to renew the special permit subject to the same conditions except that expiration will occur in three rather than two years.

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

Present at the public hearing was Jeffrey Talmadge, who said that he is co-owner of We Need a Vacation.com, which is an internet business. He said that the request is for renewal of a home occupation special permit that they have had since the early 2000's.

Mr. Adams asked about employees or members of the public that come to the property. Mr. Talmadge said that a couple of employees come to the property. He said that it is uncommon for any members of the public. He said that someone may come to pick something up once every three weeks. He said that they can accommodate all parking on the site.

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

Mr. Adams moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to renew the special permit subject to the same conditions except that expiration will occur in three rather than two years.

ZBA 2019-38, BRIGHTSIDE INVESTMENTS, LLC, 7 & 11 LONGMEADOW ROAD

Mr. Becker said that the action that the Board will be taking at the public meeting is to decide whether there will be a motion for reconsideration. He proposed that the Board talk about it first and if the members feel compelled to ask Brightside for support, they will go ahead and do that. He said that the Board received Mr. Himmelberger's base and supplemental arguments in favor of reconsideration. He said that on the other side, Town Counsel's opinion related to Mr. Becker by phone that the Zoning Bylaw has no provision for reconsideration of an appeal.

Mr. Becker said that there was a good timeline for when things were submitted but the context for it was not there. He said that the permit request was submitted after on February 6, 2019 that was about a week after the close of the submittal of documents for the public hearing. He said that the next available ZBA hearing scheduled was May 2, 2019, which is the date when the case was heard. He said that was later than 65 days.

Mr. Becker said that he watched the tape of the hearing. Mr. Adams said that he did not watch the tape, so he is not aware of the issues before the Board at the public hearing. He said that is not what is before this Board at the public meeting. He said that it is question of whether there has been information that has been provided to the Board in the request for reconsideration that leads the Board to believe that it should be considered again, notwithstanding the fact that there is no provision in the Zoning Bylaw (ZBL) to reconsider something.

Mr. Becker said that he appreciated Mr. Himmelberger's argument about the Rules & Regulations of the ZBL but he did not think that they trump the bylaw itself. He said that the bylaw is clear in Section 24E in the paragraph that talks about 65 days, there is no remedy if the 65 days is not met. He said that Section 24E.4. talks about 100 days and a remedy if the 100 days has not been met, which is a default to the proposal.

Mr. Becker said that his opinion is that if there is a remedy, it is found in Section 24E.5.

Mr. Sheffield said that he was a member of the Board panel at the public hearing. He said that in the call for public comment, the Board did not recognize the owners of the property as having the opportunity to speak. He said that the Board did hear very persuasively from Mr. Himmelberger about the issue on Longmeadow Road where there were two properties, # 7 and #11, where #11 is an occupied house and #7 is a new building house to be on the merged properties 7 and 11. He said that the merger makes it one property. He said that the request was to be able to occupy the building on 11 while the building on 7 was in construction, however, that then places two dwellings on the same property. He said that the offer was made to delay installation of the kitchen in the new building to keep it from being qualified as a dwelling. He said that the Board voted two in favor and one opposed, so the motion failed.

Mr. Himmelberger said that he disagreed with a contention find that the Rules & Regulations enacted by this Board for the purpose of establishing uniform procedures for conducting the business of the Board should somehow be ignored because they are more stringent. Mr. Becker said that the Rules & Regulations cannot change the requirements of the bylaw. Mr. Himmelberger said that individual rules may make for tighter regulations than a bylaw, just as the bylaw in a Zoning matter may have tighter restrictions than is in the State Statute. He said that when a board decides to promulgate rules and impose upon itself for the benefit of those appearing before it a mandatory requirement that a hearing be held within 65 days, and the Rules specifically state that upon a failure to do so, the relief being sought shall be deemed constructively approved. He said that he disagreed with a contention that because they are more restrictive upon the Board, that they do not apply and the looser less restrictive rules of the bylaw apply, where it is this Board that enacted the rules.

Mr. Himmelberger said that he was seeking to have the Board recognize the inadvertence of not conducting the hearing within 65 days and deem that the relief being sought is constructively approved, namely, that a building permit application may be submitted for the reconstruction of #7 to comply with all application rules but which may not be rejected based upon the contention that somehow it would result in two dwelling units on a single lot by providing for that building permit because, in fact, as discussed at the public hearing, there are specific definitions within the bylaw that define what a dwelling is, which is that a dwelling is habitable and has cooking facilities. Mr. Becker said that a unit has cooking facilities, a dwelling does not. Mr. Himmelberger said that a dwelling has to be habitable and cannot be without a Certificate of Occupancy.

Mr. Becker said that the purpose of this public meeting is not to argue the merits of the case.

Mr. Adams said that the request before the Board at the public was to make life a little easier for the homeowners by having a residence adjacent to where a new home is being built for them on what will become the same property. He said that once the lot were combined it became a new property with two houses on it, which is a violation of the bylaw. He said that he was inclined to support the building official, who has the responsibility to enforce the ZBL, whose approach discounts agreements and promises to tear down a house once the new house is done or not put a kitchen in the new house until the old house torn down. He said that it seems like a lot of making adjustments in order to give the homeowner the flexibility to live next to where their new home is being built. He said that he was not convinced that is essential.

Mr. Becker said that the remedy is described in Section 24E.5 of the ZBL. He said that it does not require going outside of the ZBL to find some sort of reconsideration that is not really there. Mr. Himmelberger said that they are simply asking the Board to reconsider and enforce its Rules & Regulations regarding not meeting the time limits and constructive approval. Mr. Becker said that the remedy still applies.

Mr. Himmelberger asked the Board to acknowledge its rules under the motion for reconsideration and deem that the failure of the Board to hold a hearing within 65 days is deemed a grant of the appeal. He said that is not a new appeal or a new petition but is asking the Board to take judicial notice of the procedural defect in this case and to follow its rules when such a defect is brought to its attention.

Mr. Sheffield said that a petition that was signed by about 20 neighbors in favor of the proposed request was submitted to the Board for the public hearing.

Mr. Adams said that he had not heard why the request to live in the home at 11 Longmeadow is essential. Mr. Thorpe said that the motion for reconsideration discusses the reasons for the request. He said that at the public hearing, he and his wife did not get a chance to talk. He said that they wanted to address some of the non-legal issues of intent and trying explain what they were trying to do and what they ran up against. Mr. Becker said that he disagreed with that. He said that he watched the tape and it was clear that the vote was two to one and there was no point in talking about it more. He said that the Thorpe's representative made eloquent arguments through the whole of that portion of the hearing. Mr. Thorpe said that there is the side that Mr. Himmelberger does not know about and when the public was asked for comments, Ken Soderholm stood up and asked to speak. Mr. Becker said that this Board is not here to hear the merits of the case but to determine whether it will accept a motion for reconsideration.

Mr. Thorpe said that he would address the question of whether there is any meaningful reason to live there in the house at 11 Longmeadow while they are building the house at 7 Longmeadow Road. Mr. Adams said that many people have renovated their homes, have moved elsewhere while that happens and then moved back. Mr. Thorpe said that when they purchased the home next door, they took into account the need to renovate their house because of situations they incurred. He said that he took into account in the price that it would be pay for almost \$200,000 which they would have to pay to rent a place. He said that having to rent a place as Chairman Seegel had suggested would be expensive and would change the entirety of the project. Mr. Becker said that the Thorpe's were the ones who combined the lots and nobody forced them to do that.

Mr. Thorpe said that he questions whether the lots are combined. He said that he was told by two different departments in Town Hall that the lots are not combined. He said that he would prefer that the lots be combined for tax purposes. Mr. Becker said that issue is not for this forum.

Mr. Thorpe said that it will be extremely expensive to have to move. He said that they have already moved three times in the past two years. He said that they have two children who go to school around the corner. He said that it will be extremely expensive to rent another place and will cause the project to not occur. He said that when they spoke with the 20 neighbors, all of them had the same issue, which was that there has been a lot of construction on Longmeadow Road and many times workers come early and leave late. He said that when some issues came up with dirt tracking on the road, he went out and took care of the issue himself. He said that if he can live there, he will have the ability to oversee the behavior or issues, whereas if he is somewhere else, he cannot. He said that they got 100 percent approval from the neighbors.

Mr. Becker asked to stick to the issue before the Board.

Mr. Himmelberger said that Mr. Becker indicated that it was a dwelling unit not a dwelling that had the requirement of a kitchen. He said that, in fact, a one family is defined in the ZBL as detached dwelling containing not more than one dwelling unit. He said that it follows that if there is a one family dwelling without a kitchen, it does not contain a dwelling unit and therefore cannot be in violation of the bylaw. Mr. Becker said that a dwelling is defined in the bylaw as a building which is designed for or redesigned or used for human habitation. He said that it does not say anything about kitchen. Mr. Himmelberger said that on Page 10 of the ZBL, a one-family dwelling is described as a detached dwelling containing not more than one dwelling unit. He said that on Page 8 of the ZBL, a dwelling unit is described as a room, group of rooms, or dwelling forming a habitable unit for one family with facilities for living, sleeping, food storage and/or preparation and eating. He said that is where the kitchen comes into being and that is a touchstone by which the Building Inspector determines whether or not a building is a dwelling.

Mr. Adams said that, as a former building official, it is almost impossible for a building official to monitor whether there are facilities for food preparation and storage in a dwelling because all it takes is a microwave and a hot plate to create a kitchen in a place with a sink and a refrigerator. He said that it is complicated for the building official to enforce that kind of thing. Mr. Himmelberger said that except where they already granted the permit for gutting the existing kitchen and the kitchen is gutted. He said that the building cannot be used without a CO, which would never be granted. Mr. Becker said that gets into the merits of the case.

Mr. Becker asked if the Board needed anything further to consider the motion for reconsideration.

Mr. Sheffield moved, Mr. Becker seconded the motion, and the Board voted to reconsider the Zoning Board Appeals vote on May 2, 2019 denying the Applicant's February 6, 2019 Appeal of the Building Inspector's determination with one vote in the affirmative and two votes in the negative. The motion failed.

PUBLIC HEARING

ZBA 2019-48, LAURA LONDON, 440 WASHINGTON STREET

Present at the hearing were Paul Worthington, Designer, and Marc Charney, who is now the owner of the property.

Mr. Worthington said that the plan is to rebuild over the existing footprint, in particular, developing the third floor for better sized living space.

Mr. Adams said that it was never clearly said in application package that this is a legal two-family. Mr. Charney said that it is. He said that it is located on a pie shaped parcel. Mr. Becker said that it is the only single family lot along that stretch where it is park land or General Residence.

Mr. Worthington said that they would like to take off the roof and rebuild the third floor. He said that there are some existing bays cantilevered on the second floor that poke out unsupported. He said that they would like to make them more traditional looking. He said that there is a back stairway that is not to Code. He said that they are proposing to put an exterior stair from the second floor unit down to grade for an egress. Mr. Adams asked if they considered just making it a slightly wider stair. Mr. Worthington said that the way that the framing is, it would be tough and would also take away from what is not a wide house at 18.3 feet in the rear and 21.3 feet at the front. Mr. Adams said that, because they are protected from the weather, interior stairs are preferable. Mr. Worthington said that the stairs will be the second means of egress.

Mr. Becker said that the plot plan shows a 40 foot private way on what the Natural Resources Commission (NRC) identifies as parkland. Mr. Charney said that it was a mistake that the surveyor identified that piece of land as a private way. He said that he owns the house at 436 Washington Street, and when he purchased the house in 2002, that strip was a dirt driveway. He said that, at the time, he went to town officials to ask if the town would pave. He said that he was told that the town would not pave it but he could. He said that it is a driveway to get to the rear area of 436 Washington Street and to get into the property. He said that he spoke with Brandon Schmitt in NRC and cleared it up with him.

Mr. Sheffield said that the property is shown as town land on town maps. Mr. Becker said that NRC sent a letter to Board claiming that the Board should not grant and Zoning relief until encroachments onto NRC land have been resolved. Mr. Charney said that he read the letter from NRC and his understanding is that NRC wants the encroachment issues to be resolved, which could be handled with a condition from the Zoning Board. He said that was not aware when he purchased the property that the shed crosses the property line. He said that it was constructed 50 to 60 years ago. He said that he is open to whatever the Board would like to have done with the garage/shed. He said that, in speaking with Mr. Schmitt, he learned that historically this was a way for the town to get to Hunnewell Field to dump snow. He said that he has an easement to use the right of way to access 436 and 440 Washington Street. He said that he discussed the possibility of buying that strip of land with Mr. Schmitt but it would involve a major process.

Mr. Charney said that what he is seeking from the Zoning Board is a determination that the encroachment is diminimis. Mr. Adams said that a huge part of the garage is encroaching. He confirmed that when Mr. Charney bought the property, it came with the easement. Mr. Becker said that the Board does not know the history of easement and what agreements were made.

Mr. Charney said that he can take the garage down.

Mr. Adams said that the plot plan shows what appears to be two structures, the garage and another part at the back. Mr. Charney displayed pictures of the garage structure.

Mr. Sheffield said that, with the fence from garage to garage, the land is unusable by the town. Mr. Becker said that the NRC letter that the Board received had a letter attached from December 15, 2015 that told Mr. Charney that the fence would have to come down. Mr. Charney said that the fence is gone.

Mr. Adams said that this is a difficult case. He said that the structures are encroaching closely to the property lines and are over the property lines onto parkland in some instances. He said that he did not have a problem with the property being next to public land. He said that Mr. Charney is reasonably confident that the land will never be built on. Mr. Charney said that they mow the lawn. He said that there is a barrier to where DPW mows the field.

Mr. Sheffield asked about photographs attached to the December 15, 2015 letter to Mr. Charney that show debris on park land. Mr. Charney said that the area has been cleaned up.

Mr. Becker said that there is an upcoming project at Hunnewell Field. Mr. Charney said that he has no interest in laying claim to the piece of park land. Mr. Worthington said that it is separated by a tree line and is pretty secluded.

Mr. Sheffield asked about the current use of the garage. Mr. Worthington said that it is used as a shed for storage. He said that you could fit a small car in there.

Mr. Adams said that the bituminous pavement crosses the property line. Mr. Worthington said that will be removed.

Mr. Adams asked if there are any responsibilities to repair the pavement. Mr. Charney said that it was dirt. He said that he called the town in 2003 and was told that he could pave it. He said that the town came out and set a water valve in place. He said that he does maintain even though it is not his land and he does not pay taxes on it.

Mr. Becker said that the air conditioning condensers are in the setback. Mr. Charney said that they can move them to a spot in the front. Mr. Worthington said that the condensers are the least visible where they are now. Mr. Becker said that they only place that they might not be in the setback would be on the left at the front. He said that the petition was advertised as a special permit. Mr. Charney said that they can move the condensers to a location that will not require a variance.

Mr. Sheffield said that a note on the plans says that the box bay will go to grade. Mr. Worthington said that it will require a foundation. He said that detail is usually part of the construction drawings. Mr. Becker said that having a foundation defines the edge of the side yard setback. He said that because everything here is nonconforming, the impact is minimal.

Mr. Adams said that typically he would be concerned about leaving .9 feet on the side of the porch. He said that for the time being no one will be using the land next to it. Mr. Worthington said that it could be converted to a ramp for wheelchair access in the future, which was the reasoning behind building that out.

Mr. Charney said that he would consider starting the process of acquiring the town land. He said that it would be a long term process and he would have to find twice the amount of land to compensate the town. He said that Mr. Schmitt told him that this piece of land is not currently a big priority for NRC. Mr. Becker said that the Dunkin Donuts on Route 9 spent a lot of time acquiring State land to its property.

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

Robert Fleming, 432 Washington Street, said the he grew up on the property. He said that he has known Mr. Charney since 2002 and thinks that he is a good neighbor. He discussed the history of 440 Washington Street. He said that at one time they used to park on the Tommy Lee Field and for 90 years there were no problems. He said that Washington Street was re-curbed in 1994 and that is where the town trucks came in to dump snow. He said that when they built the Tommy Lee Field, people could no longer park where they had. He said that the town was open to letting people do what they wanted with it. He said that it got tightened up from the west because of Tommy Lee Field, still retaining the 40 foot right of way.

Mr. Fleming said that he had issue with one of the previous tenants at 440 Washington Street because, once in a while when he wants he driveway cleared, he will park in the right of way between the trees. He said a

prior tenant told him that it was private land. He said that his concern is that the parking is tight. He asked if there will still be enough parking for the tenants with the expanded space.

Mr. Adams confirmed that Mr. Charney's house that is adjacent to 440 Washington Street is a two-family as well. He said that there are four dwellings competing for parking there. He asked about parking on Washington Street. Mr. Charney said that the parking spaces on Washington Street were moved back to align with the fields when the High School Project was done.

Mr. Sheffield said that removing the garage encroachment in the right of way would increase the potential for surface parking. open up space for parking –

Mr. Becker read the Planning Board recommendation

Mr. Fleming said that his neighbor has an air conditioner condenser that is two feet from the property line. He said that he did not think that having the condenser on the west side will make any difference. Mr. Becker said that it is in violation of the Zoning Bylaw.

David Himmelberger, 387 Linden Street, said that he did not have a problem with increasing the density of the house but did not think that there are other houses in the General Residence District that have second story staircases projecting from them. He said that projects a certain tenement look on a main thoroughfare. He said that it is a pre-existing nonconforming lot and two-family, but the town generally strives to minimize the appearance of two families. He said that this will go from a single to a double door and a staircase on the first floor to a staircase up to the second floor. He said that he is okay with the increased height and the dormers but thinks that it would be substantially more detrimental based upon how it appears to the public and passersby. He said that there should be a condition that there be no encroachment on the town land. He said that the town has an encroachment policy that is not always uniformly enforced but this Board has always enforced when it is presented with the option.

Mr. Adams said that he raised a concern about an interior versus an exterior stair. He said that the exterior stair will encroach closer to the property line, except for the garage that goes over the property line. He said that he would be inclined to want to condition the decision to having the stair moved into the building.

Mr. Charney said that, as the owner of a two-family house at 436 and now 440 Washington Street, the town is striving toward diversity of housing. He said that the origins of this lot are unknown and he does not know how it ended up sitting on its own as a single family house. He said that Mr. Worthington came up with a tasteful design and the Planning Board supported that. He said that there have been situations in the past with two-family homes in single family districts have been asked to be reverted to single families. He said that this is good candidate for promoting the town's diverse housing stock.

Mr. Worthington said that they could keep the existing stair that is unsafe but what was proposed would be an improvement in safety and a better way to get outside in the event of a fire. He said that at 29 inches wide, it is way under code and the proposal is an attempt to meet code, be safe and gain 27 square feet.

Mr. Becker discussed possible conditions. He said that one would be to move the stairs inside, the second would be to take the garage out of the setback or adjacent land, and the ac condensers.

Mr. Himmelberger said that what he finds off-putting is the exposed stairway. He asked if it would be possible to enclose the stair to make it look like part of the building. He said that it is a dense lot and he did not think that anyone would be concerned about structure moving closer to the lot line. He said that would improve the appearance and the additional square footage inside would be retained. Mr. Charney said that would be doable. Mr. Worthington said that there will be more mass.

Mr. Adams said that he did not want to have a major design change as a condition. He said that he would have to see the revised plan. Mr. Sheffield said that he agreed with Mr. Adams. He said that there a number of things that the applicant can do to make the design more palatable.

Mr. Becker suggested and Mr. Charney asked that the hearing be continued.

Mr. Adams moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to continue the hearing to July 11, 2019.

ZBA 2019-52, JAMES TAU, 35 CLIFFORD STREET

Present at the public hearing was James Tau.

Mr. Tau said that the proposal is to tear down the existing structure and rebuild, according to the plans that were submitted. He said that the existing building has a couple of nonconformities. He said that the proposal is to build on the existing footprint and to build an addition on the other side of the property that will meet setback requirements. He said that the request is to build on the existing footprint.

Mr. Sheffield said that the front yard setback is nonconforming.

Mr. Adams confirmed that Mr. Tau is a different owner from the person who came before the Board in 2018. He asked if the previous owner acted on the relief that the Board granted. Mr. Tau said that they did not. He said that the currently proposed design is similar to the previous design.

Mr. Becker asked about TLAG calculations. Mr. Tau said that it will be 5,751.3 square feet, including the garage. Mr. Adams said that the TLAG is much larger than the threshold of 3,600 square feet for the district. Mr. Tau said that the calculations include the attic and the garage. He said that the replacement house will be on the same footprint. He said that most of the additional square footage is from the attic. He said that the existing ridge is 24 feet, which is significantly lower than the houses next to it. He said that the proposed ridge will be 31.6 feet, similar to the houses next to it. He said that it will not appear to be massive from the street because the façade is narrow and goes way back. He said that the house is deceptively big. He said that the garage to the left is set back 30 to 31 feet. He said that because the garage is set behind the porch, it does not seem to add mass and bulk to the house.

Mr. Adams asked if the Applicant could have maintained the compliant setbacks and still got the size house that he wanted. He said that the front yard setback is more than what is proposed. Mr. Becker said that because they are tearing down the house, why not build a compliant house. Mr. Tau said that there are time constraints. He said that they would like to move in before the next school year starts. He said that in trying to work with the existing footprint and trying to come up with a floor plan that they liked, they needed the kitchen to be in a certain position in the house. He said that they also wanted a first floor bedroom. He said that they were to make the front of the house conforming, that would make it too small. He said that they did not like the idea of a porch. He said that keeping the existing footprint seemed like a good compromise.

Mr. Becker read the Planning Board recommendation.

Mr. Sheffield said that the proposed flat uninterrupted façade is 76 feet long with dormers at the third level. He said that marrying the two large rectangles changes the scale of the neighborhood. He said that there is a house on Clifford Street that already changes the scale of the neighborhood dramatically. He said that the current house has more texture and character than the proposed house. He suggested that this continue in the design phase for a while.

Mr. Becker discussed the options for moving forward with the petition.

Mr. Becker said that the trigger for Large House Review (LHR) in a 10,000 square foot district is 3,600 square feet and the proposed structure is 5,700 square feet, which is the trigger for a 20,000 square foot district. He said that something that is much closer to 3,600 square feet would be easier to get over the size. He said that looking around the neighborhood, the houses are smaller. He said that, at 5,750 square feet, the Planning Board said that it would be substantially more detrimental to the neighborhood.

Mr. Tau requested that the petition be allowed to be withdrawn without prejudice.

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

ZBA 2019-55, STEPHEN O'BRIEN, 42 LONGFELLOW ROAD

Mr. Becker said that the Board received a request from the Applicant to withdraw the petition without prejudice.

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

ZBA 2019-56, XIANG ZHEN, 9 COLUMBIA STREET

Present at the public hearing were Xiang Zhen and Wei Fu, who said that the house is nonconforming and the detached two story garage is conforming. She said that the request is to build an addition between the two structures to connect them. She said that the new addition will not exceed the height of the existing house. She said that they will not build beyond the nonconforming part of the house. She said that they will demolish the nonconforming deck. She said that they would like to make the changes to get more privacy and security. She said that the house is next to several commercial properties and banks. Mr. Fu said that after they built their garage, the bank next to their house was robbed. He said that Columbia is a one way street and they live at the end. He said that on a daily basis they see cars come in, discover that it is a one way street and turn onto their driveway to make a u turn. He said that they have two small children who play table tennis on the first floor of the garage. He said that his workshop is on the top floor of the garage. He said that they will feel more secure if the structures are connected.

Ms. Zhen said that connecting the structures will make things easier in the winter. She said that right now they are living with their children and parents. She said that they only have one full bath and the plan is to add a full bath. She said that they love the neighborhood and want to continue to live there more comfortably.

Mr. Becker said that the front yard and left side yard setbacks are nonconforming.

Mr. Becker read the Planning Board recommendation.

Mr. Sheffield said that the proposal makes sense. He said that linking the garage to the house will make it much more convenient. He suggested that the architect look for ways to make the courtyard between the garage and the bay window more attractive.

Mr. Adams asked about the use of the second floor workshop. Mr. Fu said that he uses it in connection with his hobby of remote control models.

Mr. Fu said that they have lived there for eight years and love the neighborhood. He said that they became concerned about security after the bank was robbed. He said that connecting the garage to the house will make them feel that much better.

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

Mr. Sheffield moved, Mr. Adams seconded the motion, and the Board voted unanimously to approve a special permit, as presented.

ZBA 2019-57, GERARDO & TARA VENTURA, 14 WILDE ROAD

Present at the public hearing was Tara Ventura, who said that the request is for a special permit for the location of the ac condensers. She said that they were previously before the Board for a permit to reconstruct the garage. She said that the ac pads were not included in the plans. She said that the property falls within the wetlands and as part of the renovations, the Wetlands Protection Committee is requiring them to build stormwater management system to be installed in the back yard. She said that it will require extensive maintenance and will be the last item completed as part of their home renovation project. She said that they are proposing to tuck the ac condensers at the back where it will have the least impact to the wetlands. She said that the right side of the house falls within the 100 foot buffer zone. She said that they also wanted to locate them far away from the excavation site for the stormwater drainage pit.

Ms. Ventura said that she spoke with her neighbor and she had no concerns.

Ms. Ventura said that they do not have a lot of options, given the wetlands.

Mr. Becker said that the Planning Board recommendation says that the request should be for a variance. He said that there was nothing submitted that talked about topography. Mr. Adams said that there are issues with wetlands. Ms. Ventura said that the plans were reviewed by the Wetlands Protection Committee. She said that their project was approved by Wetlands, Historical Commission and ZBA and is under construction. She said that for some reason the ac condensers were not on the plan.

The Board discussed ac condensers and noise and visual impact that is discussed in the Zoning Bylaw. Mr. Sheffield ac companies offer sound attenuation packages. He said that there is an opportunity for shielding in the side yard. Mr. Adams said that the Board appreciates that Ms. Ventura spoke with the neighbor.

The Board discussed new State regulations that had recently been argued before the Board concerning intensification of existing nonconformities. Mr. Adams discussed the issue that homeowners with small lots face with the inability to install ac condensers if they do not meet setback requirements. Mr. Becker said that if the Board treats this petition in the same way as the previously approved petition that was argued under the State case law, it has to make a finding that the proposed alteration shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. He said that the Applicant chose the ac with the lowest decibel level of that particular model. Mr. Sheffield said that ac companies can provide sound attenuation packages.

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

Mr. Becker moved, Mr. Adams seconded the motion, and the Board voted unanimously to grant a special permit for two air conditioning condensers, as shown on the plans, subject to conditions that the model that was submitted be installed and that an upgrade for sound attenuation, if available from the manufacturer, be installed.

ZBA 2019-58, NANETTE & CHRIS ADAIR, 30 WHITING ROAD

Present at the public hearing were John Chace, Duckham Architects, and Nanette Adair.

Mr. Chace said that the property is located in a 20,000 square foot Single Residence District with a TLAG threshold of 5,900 square feet. He said that there is a pre-existing nonconforming side yard setback of 9.3 feet to the garage where 20 feet is required. He said that the proposal is for a two story addition at the rear that will not be visible from the street. He said that the height of the addition will be less than the height of the existing house. He said that the Applicant is proposing to fill in the breezeway between the garage and the main house for a mudroom where the infill will maintain the architecture of the existing breezeway. He said that the proposed construction will meet setback requirements and will be in keeping with the original design and will not be more detrimental to the neighborhood.

Mr. Becker read the Planning Board recommendation

Mr. Sheffield asked about the portico at the front. Mr. Chace said that there will be a new entry way that will meet setback requirements. He said that it is currently an uncovered entry door. He said that the new entry will provide weather protection.

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

Mr. Sheffield moved, Mr. Adams seconded the motion, and the Board voted unanimously to approve a special permit, as submitted.

ZBA 2019-54, HYMAN FELDMAN FAMILY TRUST & DANIEL KARP, M.D., 170-184 WORCESTER AND 7 BURKE LANE

Present at the public hearing were Dennis Dischino, representing the Petitioner, and Dan Hazen, G & H Engineering.

Mr. Dischino said that the Board's comments were incorporated in updated plan. He said that there will be 82 parking spaces where 77 to 79 spaces are required. He discussed the proposal to move the curb cut on the ramp to the west, pedestrian circulation, new landscaping, directional arrow added, and details on the retaining walls, which are all under four feet.

Mr. Adams discussed provision for a reasonable sidewalk in front of the Worcester Street side of the building to allow for customer access to the businesses. He said that he was concerned about vehicular circulation on the site and the door facing Burke Lane. Mr. Dischino said that the existing entrance will stay.

Mr. Becker said that since the previous hearing, he had discussions with DPW about who owns the ramp and where it is one way versus where it is two way. He said that the Applicant should ask the State about the split in traffic and consider its impact on this and the Cedar Place project. He said that there may be a possible solution that benefits everybody.

Mr. Becker said that the Board appreciated the work that was done to organize the plans but it will need more time because it received the plans just before the hearing tonight. He said that the Board will need further feedback from DPW. He said that it is best if the Board understands the questions that should be posed to the State.

Mr. Dischino said that the Applicant wants to get this done by August because parking is key to getting the building leased.

Mr. Sheffield discussed the possibility of no exit to Burke Lane and changing the location of the proposed entrance. Mr. Dischino said that it would be a good idea to move it to the west.

Mr. Sheffield discussed one-way clockwise circulation on the property. He said that parking spaces #45 and #26 could be eliminated because of the turning radius for counter clockwise flow. He said that they probably do not want to have raised curbs for snow plowing. He said that the area could be marked for pedestrian access to the sidewalk if those two space were not occupied by cars. Mr. Dischino said that made sense. He said that it also makes for an easier turn.

Mr. Adams said that the State may not approve a two way ramp because they would increase the possibility that people going east on Route 9 will think that they have room to take a right to Burke Lane and wind their way through the back roads to get to Cedar Street. Mr. Becker said that is something that the State would take into consideration if asked about making changes to the ramp. Mr. Adams questioned whether there is sufficient pavement width on the ramp.

Mr. Becker discussed stormwater management and the porous pavement. He said that it is not clear where the water will go. Mr. Hazen said that there is two feet of storage under the pavement. He said that assuming 40 percent voids in the stone, there will be nine to ten inches of storage. He said that the 100 year storm in this area is seven inches of rain. He said that nine inches of rain is closer to a 200 year storm. Mr. Becker asked if there is a mechanism for overflow. Mr. Hazen said that all of the water on the pavement will infiltrate. He said that the University of New Hampshire puts out information about testing of porous pavement. He said that there is sandy soil at this site. He said that their testing down to 10 feet did not show seasonal high groundwater.

Mr. Becker said that his concern is not so much with larger storms but with sequential storms. Mr. Hazen said that they looked at using porous pavement versus chambers or underground detention and came to the conclusion that this site lends itself to porous pavement technology because of the type of soil at the site.

Mr. Adams asked if there are many properties in metro west that have used porous pavement. Mr. Hazen said that he spoke with an Engineer at DPW and was told that the technology has been used in some areas in town and has worked well. Mr. Becker said that a portion of the roadway that goes behind the High School is porous pavement. Mr. Hazen said that there is an industrial parking lot off of Route 9 where it was used. He said that he has used the technology in other towns and can provide information about that. Mr. Becker said that the underlying issue is that the Board has not seen it used in this kind of application before, so it is struggling to be sure that it knows the right questions to ask.

Mr. Hazen said that with this technology, the amount of salt needed in the winter is a lot less because there is not as much melting and refreezing. He said that as the snow melts, it goes into the pavement rather than running off. He said that because of the depth of the system, it will not freeze.

Mr. Adams asked if special striping has to be used on porous pavement. Mr. Hazen said that the striping is the same. He said that the paint does not take up enough square footage to impact the system.

Mr. Adams said that the Construction Management Plan (CMP) will need further depth to it. He said that it did not fully address who the paving contractor will be. He said that the project will involve hauling a lot of subsoil off of the site to get three plus feet of storage and paving, which will involve a lot of trucks. He said that if the new lot is done first, they will have to remove the subsoil off of the premises and that will involve a fair number of trucks.

Mr. Becker said that it is important for the Board to have a good sense of the impacts of things happening on site that affect things that are off site. He said that the CMP that was submitted was a good start but there are a lot of things that the Board is used to seeing that are not there yet.

Mr. Adams said that the Board will need to know how things will be controlled, how construction worker parking will work, and how it will be ensured that contractors and subcontractors are monitored to not go onto Burke Lane.

Mr. Dischino said that they just started going out to bid.

Mr. Sheffield said that the Board will need to see the sequence of construction, based on trying to do the new parking lot first to avoid damaging it with the remaining construction. Mr. Dischino said that there are two or three contractors that he has worked with for many years. He said that all of the construction vehicles will park on the existing lot and then will shift and park on the new lot. He said that the restaurant is being sold and will probably close for a while to do renovations.

Mr. Dischino discussed closing up the curb cut on Burke Lane and removing two parking spaces at the end. Mr. Sheffield said that the Board does not know what the State will say about the ramp in relation to entry and exit on Burke Lane.

Mr. Becker asked about roof runoff with respect to stormwater management. Mr. Hazen said that the runoff will go from gutters into the pavement. He said that it was taken into consideration when they did the calculations for impervious area.

Mr. Adams asked if the sidewalks will be permeable. Mr. Hazen said that they will not. He said that they will have to be salted. Mr. Dischino said that they will run gutters under the sidewalk or in the stone.

Mr. Sheffield said that, once completed, it will be a remarkable upgrade to this property.

Mr. Adams asked about proposed signage. Mr. Dischino said that there is no room out front for a standing sign. He said that there will be signage on the façade of the building at 184 Worcester Street and the restaurant will have signage on its façade. He said that there is existing signage on the front façade of the two story office building at 170 Worcester Street and a sign on Burke Lane where there is an entryway. He said that there is a one way directional sign proposed in front of 184 Worcester Street.

Mr. Adams asked about the planting strip and public sidewalk section including the drive lane on Burke Lane side. He said that there will be a four foot elevation change. Mr. Hazen said that there will be a timber type guardrail at the top to delineate the area so that people see that they cannot just drive across. He said that the wall itself will only be two feet tall. Mr. Adams said that the earlier plans showed elevations on both sides. Mr. Hazen said that by sliding things over a bit, they were able to grade it up and shorten the walls.

Mr. Adams asked about the width of the green space. Mr. Hazen said that it will be approximately six to eight feet.

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

Joseph Zani, 19 Burke Lane, asked if the four foot wall is on the side facing the ramp. Mr. Adams said that it is between the property and the sidewalk at Burke Lane. He said that area has been reduced. Mr. Sheffield said that people short cut the corner at the ramp and Burke Lane.

Mr. Zani said that many times people will park cars at the corner near the hydrant. He said that makes for a blind turn where you cannot see cars coming out of Burke Lane. He said that school buses come down the right lane and move to the left to make the turn onto Route 9. He said that visibility is important for people coming down the ramp.

Mr. Zani asked where snow will be dumped. Mr. Adams said that there is one dump area identified on the plans. Mr. Becker said that a new set of plans was submitted, so the Board does not know what the plan will be yet. He said that there will either be on-site snow storage or the operator of the site will be responsible for removing snow from the site.

Mr. Zani said that there is a partial solution for cars in the parking lot who wish to go in the opposite direction. He said that they can continue down Route 9 and make a U turn at the first set of lights, or go further into Newton and loop around under the bridge. He said that it can be done without going down Burke Lane. Mr. Becker said that cars can take a right onto Dearborn Street or Willow. He said that all of those roads are public ways and people will go where they want to. He said that the best that the Board can do is to encourage drivers to go where it would like them to go and facilitate their doing that. He said that people do not always do what you think that they will do.

Mr. Zani asked about the new proposed opening on Burke Lane. He asked if it will be big enough for vehicles. He said that if it is big enough for vehicles, it will not stop cars from going down Burke Lane. Mr. Becker said that right now it is a separate property and the exit to Burke Lane was the only place it could go. Mr. Zani said that it was residential but will be commercial. Mr. Becker said that it will be used as a parking lot. Mr. Zani said that there was a Zone change approved for the property. Mr. Becker said that opening or closing entrances to Burke Lane or the Route 9 ramp will not change the behavior of people and where they want to drive. Mr. Zani said that the more that you cut it down, the better.

Mr. Adams said that it may be possible to put a sign that restricts entry at certain hours. Mr. Becker said that Burke Lane is a public way.

Mr. Zani said that he is concerned about safety for elderly people and children. He said that there are no sidewalks on Burke Lane. He said that it is not a straight road where you can see from one end to the other.

Mr. Zani asked if the porous materials have been tested for freezing. Mr. Becker said that Mr. Hazen explained that if you select the depth below the frost line, it will not freeze.

Mr. Adams said that the University of New Hampshire has a section of its roadway that has been completed in pervious pavement and has become a demonstration area. He said that it has to be swept at least twice a year and cannot be sanded. He said that there are high hopes for the pavement as a way to solve water problems. Mr. Sheffield said that pervious pavement has been around for a while.

Mr. Dischino said that they will not be building a new building and will not be expanding the size of the existing building. He said that the building has been fully leased in the past. He said that people generally leave the site by exiting onto Route 9. He said that the issue in the past was overflow parking onto Burke Lane when the building was fully leased. He said that this project will correct that.

Mr. Adams said that the Board will need to get more feedback from the Engineering Division at DPW. He said that he did not think that the Board should hold the project up waiting for a response from the State about the ramp. He said that the CMP should have more detail, especially properly planning and scheduling the phasing of the work. He said that the Board typically knows the number of trucks that will be coming and going to the site.

Mr. Becker discussed continuing the hearing.

Mr. Sheffield moved, Mr. Adams seconded the motion, and the Board voted unanimously to continue the hearing to June 27, 2019.

As there was no further business to come before the Board, the hearing was adjourned at 10:40 pm.

Respectfully submitted

Lenore R. Mahoney
Executive Secretary

DRAFT