



ZONING BOARD OF APPEALS

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October 10, 2019

7:30 pm

Juliani Meeting Room

Town Hall

Zoning Board of Appeals Members Present:

J. Randolph Becker
Richard L. Seegel
David G. Sheffield
Robert W. Levy
Walter B. Adams

PUBLIC MEETING

ZBA 2018-13, BABSON COLLEGE HORN LIBRARY

Present at the Public Meeting was David Grissino, Director of Capital Projects & Planning, Babson College. He said that Babson College came before the Board earlier this year to request an extension for the completion of the landscaping work at the Horn Library. He said that it rained consistently throughout the Spring, which led to some difficulties in certain parts of the landscaping installation. He said that they hoped to open the library as part of Babson's Centennial celebration in May and extension of the permit to August 31, 2019 enabled them to get a Temporary Certificate of Occupancy (CO) for that. He said that they ran into some difficulties with the landscape contractor and needed to bring in a new contractor to finish the job. He said that led to some delays to get the work complete. He said that currently all of the walkways, grass, and plantings have been completed but there are two small areas, a planter and a small brick patio that are not done. He said that the request is for an additional extension of the permit to November 22, 2019 to complete the work in the two minor areas to get a Final CO. He said that there are no safety issues involved. He said that the ZBA's decision that extended the time to get the landscaping finished has lapsed and there is a disconnect between that and the Temporary CO.

Mr. Seegel moved, Mr. Adams seconded the motion and the Board voted unanimously to make a determination that the proposed extension to November 22, 2019 to complete the landscaping work is a minor modification that does not required a public hearing, and grant the extension.

PUBLIC HEARING

ZBA 2019-73, SAL INSOGNA, 95 RUSSELL ROAD

Present at the public hearing was Sal Insogna, the Petitioner.

Mr. Becker said that the request before the Board was for a special permit for condenser for a ductless heating and cooling system in the side yard setback in an area of the house that was already subject to a variance. He said that the Board's discussion at the previous hearing focused on the noise because, at the time there was no information in the package that was submitted about noise emissions. He said that the Applicant submitted information from his contractor that shows the heating and cooling sound pressure levels which, if compared the usual stand along compressor, are somewhat lower.

Mr. Insogna said that the information that he submitted shows that the condenser will be fairly quiet.

Mr. Sheffield said that since the property is located on the edge of a water site, noise carries rather easily where people's voices can carry across the pond. He said that the number of decibels that this unit produces is quite low. He said that it may be that if the Applicant received complaints after installation, he may need to put in a sound baffle on the pond side.

Mr. Becker said that the Board discussed at the previous hearing whether the action it would take would be to modify a variance versus granting a special permit/finding.

Mr. Sheffield moved, Mr. Seegel seconded the motion, and the Board voted unanimously to grant a special permit for installation of the condenser.

PUBLIC MEETING

Mr. Levy said that the Board has been seeing more and more minor modifications of its previous decisions coming before the Board. He said that some of them are as a result of going before other town boards that require changes to be made. He said that it has generally been the Board's policy that ZBA be the last board to review the projects so that it does not have to revisit the petitions when other boards impose changes. He said that the standard for a minor modification is to correct a mistake, clerical or otherwise that happened in the original hearing. He said that the legal standard for a modification is not whether the Board would have made that decision at the original hearing. He said that the purpose of a public hearing is so that the members of the public can attend and can comment on matters that affect the neighborhood and the community at large.

ZBA 2019-70, BUILDRITE LLC, 375 LINDEN STREET

Present at the public hearing were David Himmelberger, Esq., and Michael Cremin, Manager, BuildRite LLC.

Mr. Himmelberger said that the request is for a minor modification that is the result of having gone back to the Historical Commission for approval of a waiver based on plans approved by ZBA at a public hearing. He said that the Historical Commission made a number of recommended changes, none of which impacted footprint or height. He said that the changes were aesthetic or cosmetic. He said that the Historical Commission did make some valuable recommendations, which the Applicant implemented. He said that they are currently seeking a determination that those modifications are minor.

Mr. Himmelberger said that, because they were coming back before the Board, they wanted to respond to Mr. Howlett, who is the abutter to west, regarding his concerns about drainage. He said that Mr. Howlett's property is down gradient from 375 Linden Street. He said that after the ZBA hearing, they met with Mr. Howlett and agreed to install a couple of yard drains and move infiltration systems away from his property. He said that it was not clear if that issue would have required the Applicant to come back. He said that they decided to include it in the request for minor modification.

Mr. Himmelberger said that the request is that the Board make a determination that the cosmetic or aesthetic changes are minor, and that the Board approve the modifications, and further that, the enhanced in ground drainage system is also a minor modification deserving of approval from the Board.

Mr. Levy asked for a description of the proposed changes. Mr. Himmelberger said that the pitch on the main gable on the front façade was increased from an eight to a ten pitch. He said that the doorway on the first floor was recessed from the plane with the two front windows. He said that a request was made to pull the door forward, even with the windows, within the farmer's porch. He said that the upper center window would be off-kilter and this would provide an opportunity to center all of the windows and door below. He said that it was recommended that the pitch of the shed dormer over the garage be slightly reduced to allow for slightly larger façade to accommodate six over six windows, complementary to the six over six windows on the main façade. He said that there was a request to remove an eyebrow roof over the garage doors and replace with a set of transom windows over the garage doors with two down barn lights to simplify the look. He said that the Architect on the Historical Commission was concerned about the blank wall on the front right lower façade that you would see while driving down Linden Street and asked that a window be added on the lower corner and bring it into alignment with a pre-existing window. He said that none of the changes impacted height, setback, or footprint. He said that it did add 64 feet of TLAG, 26 feet of which was in the front hallway with the door moving forward, and 38 feet in the attic space as a result of the pitch on the front gable. He said that, combined, these are minor modifications that significantly enhance the appearance of the house and make it less substantially detrimental to the neighborhood.

Mr. Himmelberger said that Mr. Howlett requested that the back right underground infiltration system be moved further away from his property line, centering it in the rear and also to move the front infiltration system further away from the left property line and a tree, and to install two yard drains which will collect any surface water from the yard and direct it into the underground infiltration systems. He said that Mr. Howlett sent an email to the Board that indicated his support for the modifications and the hope that they would be deemed minor and approved.

Mr. Seegel said that the Historical Commission did a good job with the architecture and the result is good. Mr. Adams said that the result is a benefit to the project and to those in the community who will observe it. He asked Mr. Himmelberger to describe the sequence of events so that he would have a better sense of how this all happened. Mr. Himmelberger said that the project initially went before the Historical Commission and was deemed to be preferably preserved, which then imposed a one year delay. He said that the Applicant then came to the ZBA for approval of a special permit to be sure that they could build what was proposed on the footprint. He said that after the special permit was approved, the Applicant went back to the Historical Commission seeking a waiver to build what had been approved under the special permit. He said that the Architect on the Historical Commission recommended changes to improve and enhance the façade and the Applicant agreed to make those changes, subject to coming back before the Zoning Board for its determination that the modifications are minor and its approval of those modifications.

Mr. Levy said that the proposed changes make it a better project and are insignificant with respect to Zoning issues. Mr. Adams said that the drainage issues were improved – encourage builders to address neighbors' concerns

Mr. Adams moved, Mr. Seegel seconded the motion, and the Board voted unanimously to make a determination that the proposed changes are a minor modification that do not require a public hearing, and approve the proposed changes.

ZBA 2018-28, WAYNE & JAN JOHNSON, 11 FIFE ROAD

Present at the public meeting were Robert Ouellet, current owner, Francis Contracting, and Robert Eckert, purchaser of the property.

Mr. Ouellet said that the request is for a minor modification for an extension of a deck at the rear of the property. He said that currently the property is compromised with respect to exterior egress and the limited amount of backyard. He said that, because of the depth of the property, it takes a substantial amount of stairs to get to the backyard. He said that the proposed change would give the owner outside space at the back. He said that it will not impede the neighbors because it is up against woods at the back.

Mr. Seegel asked if the proposed changes were shown to the neighbors. He said that his concern is that these are more than minor changes and should be shown to the neighbors. He said that this should be done at a public hearing.

Mr. Adams said that this is a significant change that warrants a public hearing. Mr. Ouellet said that he approached the Building Inspector prior to knowing whether this proposal would be eligible for a minor modification. He said that the Building Inspector recommended that the proposal come before the Board. He said that they were not aware of the other implications.

Mr. Adams said that it is a very challenging site. He said that there are enclosed screened porches on the property. He said that it may be possible to finish off the project now, as is. He confirmed that there is a second means of egress. He said that the owner can come back before the Board with a new request for a special permit. complete project without this –

Mr. Levy asked if the existing screened porch was modified. Mr. Ouellet said that they made it smaller because of the setbacks at the rear.

Mr. Levy said that the Board does not necessarily object to what is being proposed but believes that it should be subject to a public hearing. Mr. Adams said that it will be important to share the ideas with the neighbors.

Mr. Adams moved, Mr. Seegel seconded the motion, and the Board voted unanimously to make a determination that the proposed changes are not minor modifications.

PUBLIC HEARING

ZBA 2019-78, STEPHEN MAIMONE, 9 GRANITE STREET

Present at the public hearing was Stephen Maimone, the Petitioner. He said that the house is currently nonconforming on the front left corner and the garage is nonconforming on the side and at the rear. He said that the proposal is to remove the garage and expand the house on the back and the right side, in compliance with setback requirements.

Mr. Adams said that the proposed setbacks will be very close to the maximum allowed on three locations. He said that, as designed, the proposed addition will not be nonconforming. He said that if it gets built incorrectly, the Petitioner would have to come back before the Board to seek relief for creating a new nonconformity. Mr. Maimone said that they are confident that it will be built to specifications. Mr. Adams said that the designer squeezed the addition in to meet the setback requirements.

Mr. Maimone said that proposed lot coverage will be less than the maximum allowed. Mr. Adams asked if TLAG calculations had been done.

Mr. Levy said that the two proposed curb cuts will need approval from DPW.

Mr. Adams said that the Board has to make a finding that the proposed construction will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. He discussed concerns

about building the structure out to the maximum allowed, especially since the Board does not have any TLAG information to determine whether this would be under the threshold for Large House Review (LHR). Mr. Levy said that under the bylaw the project is exempt from LHR but the Board uses TLAG calculations anecdotally as guide for how the house fits in with the town's bylaw definition of large houses.

Mr. Levy read the Planning Staff recommendation.

Mr. Maimone said that he has approval from the Planning Board that the project is not subject to Demolition Delay.

The Board members said that they would like to see the TLAG calculations.

Mr. Seegel asked if Mr. Maimone had shown the proposed plans to his neighbors. Mr. Maimone said that he showed the plan to neighbors on the sides and across the way and there were no objections that he was aware of. He said that he would like to take down the garage that is close to the lot lines but he can keep it and renovate the house as it is.

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

Joanna Kaplan Lee, 12 Granite Street, said that she lives directly across from 9 Granite Street. She said that her biggest concerns are the number of trees that may be coming down and the proposed house seems large in a neighborhood of smaller homes. She read a statement from a neighbor who had concerns about the driveway. She said that the driveway appears to go right through where a utility pole is currently located. Mr. Adams said that the property owner will have to discuss relocation with the owner of the pole. Mr. Levy said that the Board will not be granting relief from the Tree Preservation Bylaw to the extent that it is applicable.

Mr. Adams asked if the Applicant had spoken to Ms. Lee about the proposed plans. Ms. Lee said that she met Mr. Maimone and saw the plans online. She said that more than doubling the size of the house is substantial. She said that there is one tree in front of the house that will be taken down for road work and that will also impact her view.

Patrick de Fontnouvelle, 50 Summit Road, said that he is an immediate abutter. He said that his wife spoke with Mr. Maimone on more than one occasion. He said that they appreciate that the existing garage will be coming down. He said that his understanding is that, other than the existing 14.7 side yard setback on the house, the proposed structure will meet the setback requirements. He said that size is a concern relative to the other houses in the immediate vicinity. He said that it is hard to assess visually what a calculation of 3,400 square feet means.

Mr. Seegel said that he was concerned about the increase in size. He said that there will be a partially finished basement with 1,000 square feet of additional space. He said that the Board will need to see a TLAG Affidavit to see how much of that space will be exempt.

Mr. Levy said that he would like to see a Tree Plan.

Mr. Seegel said that he is very concerned about building right up to the setbacks. He said that if they miss, they may have to take it down. He said that the Petitioner should consider reducing the size of everything slightly.

Mr. Adams said that if the Petition is continued, the Petitioner could get more information about relocation of the utility pole.

Mr. Levy said that the Board would like to see TLAG calculations and a Tree Plan. Mr. Seegel said that the plot plan should show the location of the utility pole.

The Board discussed options for moving ahead with the petition. Mr. Maimone requested that the petition be continued to November 7, 2019.

Mr. Adams moved, Mr. Seegel seconded the motion, and the Board voted unanimously to continue the petition to November 7, 2019. Mr. Levy asked that the Planning Board determination for Demolition Delay be submitted.

ZBA 2019-79, YVETTE BJORK, 38 WHITTIER ROAD

Present at the public hearing were Yvette Bjork, the Petitioner, and Michael Hally, Architect.

Ms. Bjork said that she and her family moved here two years ago. She said that they love where they live and they love their house. He said that they need to make some slight modifications. She said that they spoke with the abutting neighbors about potential changes. She submitted letters of approval from the abutting neighbors.

Mr. Hally said that it is a nonconforming lot with a nonconforming structure. He said that the proposal is to build a modest second floor addition over an existing first floor bump out on the house. He said that on the second floor, they would like to add a bath and closet to bedroom 3 where it is close to the lot line. He said that the first floor is 9.4 feet setback and they will pull the second floor back a bit and continue all the exterior trim and siding details that are on the existing house.

Mr. Adams said that there is a significant screening of large trees on the property. He said that because the trees are evergreen, the neighbor will probably not be aware of the addition, even in the winter. He said that it was good that the second floor addition was set back a bit and not encroaching more than they have to.

Mr. Levy said that the property was subject to a prior special permit that was granted in 2013. Ms. Bjork said that they moved in 2017. She said that the special permit was for the garage.

Mr. Levy asked who installed the air conditioning units. Ms. Bjork said that they were existing when they moved into the house. Mr. Levy said that the units appear to be within the setback and he did not see any approvals for them.

Mr. Levy read the Planning Board recommendation.

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

Mr. Seegel moved, Mr. Adams seconded the motion, and the Board voted unanimously to grant a special permit for a second story addition, as shown on the plan, and make a finding that the proposed structure shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

ZBA 2019-80, OAK STREET HOLDINGS LLC, 25 OAK STREET

Present at the public hearing was Victor Corda, Oak Street Holdings LLC, the Petitioner. He said that he had some discussions with a neighbor and she expressed a preference to reorient the house to the original orientation. He said that he had his engineer draft what it would look like. He said that he is comfortable making the change. Mr. Levy said that the Board would have to review the revised plans at a subsequent public hearing.

Mr. Adams discussed the Zoning Bylaw and town houses in a General Residence District. He said that the requirement is 7,000 square feet per unit. Mr. Corda said that the bylaw allows for a duplex in a General Residence District. He said that he has previously built by right duplexes in the vicinity on 10,000 square foot lots. Mr. Seegel asked what is currently on the property. Mr. Corda said that it is a single family that is surrounded by single families and multi-families. Mr. Adams said that two-family dwellings are allowed in the General Residence District but there are standards for two-families that do not apply to single families. Mr. Corda said that he has a right to create a two-family dwelling in the General Residence District. Mr. Adams referred to Section IV of the Zoning Bylaw. Mr. Corda said that he built six units on 10,000 square foot lots two years ago. He said that one of them replaced a single family house and the other was on a lot that he subdivided to two lots, by right. He said that he built three duplexes of six units by right. He said that the requirement for 7,000 square feet per unit applies to more than two dwelling units. He said that he is before the Board because the lot does not have proper frontage and is a pre-existing nonconforming lot.

Mr. Adams said that one of his concerns is whether having two units on a pork chop lot is more detrimental than having a single unit.

Mr. Seegel said that the table that Mr. Adams was referring to in Section IV of the Zoning Bylaw applies to town houses of three or more units. He said that what is allowed is any purpose authorized in a Single Residence District or a two-family dwelling, so it is a matter of right.

Mr. Seegel said that there are a lot of issues with the pork chop lot. Mr. Corda said that the split use driveway is approximately 20 feet wide for use by 25 Oak Street and the property behind it, with 9.9 feet per side. He said that it was laid out in the deed that way. He said that the lot is almost 12,000 square feet.

Mr. Seegel confirmed that the legal frontage is 9.9 feet. He said that the Board received a letter of objection from a neighbor who was concerned about the expanded footprint and driveway, proximity to town houses at 19A and 19B Oak Street, increased lot coverage, and too large at twice the existing size.

Mr. Corda said that the proposed structure is not much bigger than the existing house. He said that the proposed duplex is a duplication of the ones that he built on the corner of Linden and Curve Streets. He said that they were built on 10,000 square foot lots with no extra square footage. He said that the proposed structure will have more than a 40 foot back yard.

Mr. Seegel asked how many garages will be built. Mr. Corda said that there will be a one-car garage for each unit in the middle.

Mr. Levy said that the Planning Board raised the issue that General Residence Districts are not currently included in Large House Review (LHR). He said that the Planning Board advised that a proposed amendment to the bylaw to establish a maximum TLAG of 3,600 square feet in a General Residence District has been advertised. He said that if the bylaw amendment is approved, it is retroactive to the date of advertisement. Mr. Corda submitted a letter from Maura Healy, Attorney General that states that the amendment does not go into effect until it is voted for approval at Town Meeting. He said that he spoke with Michael Grant, Building Inspector about this and Mr. Grant agreed with the Attorney General's interpretation. He said that he was waiting to see what the outcome of the conversation with Mr. Grant was before proceeding. He said that he had already purchased the property when the citizen's petition was filed.

Mr. Seegel read the note from the Attorney General regarding G.L. c. 40 § 32. Mr. Levy said that the Board will look into G.L. c. 40 § 32. He said that the purpose of the law is to not create a rush when people oppose Zoning amendments. He said that the Applicant is coming before the Board for a special permit under Section 6, which under the Zoning Bylaw, is exempt from LHR. He questioned whether the proposal will be a change to a single family dwelling.

Mr. Adams questioned whether the Board has the right to approve a change of use from a single family to a two-family. Mr. Levy said that it is an allowed use but gets to the question of whether it is substantially more detrimental.

Reid Parker, 19C Oak Street, said that he has been a Wellesley resident for approximately 16 years. He said he has lived at 19C Oak Street for 10 years. He said that the first that he heard of the petition was when he received a postcard two weeks ago. He said that he just viewed the revised plans.

Mr. Parker said that he has two areas of concern, one is the overall size and utility of the site and the other is the environmental impact. He said that it is a nonconforming site for a reason. He said that it is a pork chop piece with a lack of frontage and no buffer. He said that three or four of the units where he lives have back yards abutting 25 Oak Street. He said that this particular site is surrounded by existing homes in every direction. He said that there is no natural buffer. He said that eight owners will be directly impacted by this development. He said that the property will go from an existing family home to a property that has three bedrooms, an office with a window, and a loft area. He said that even though it is three bedrooms, it is almost configured to have five bedrooms per each unit. He said that is a very intense use on a small lot. He said that on the original plan, the expanded footprint of the building, the driveway and the back yard made this property substantially closer to the neighbors. He said that in addition to the utility, the amount of people, the amount of bedrooms potentially for each of the two units, the proximity to all of the homes, he is concerned about how the site will work, the number of trees that may be taken down, increased impervious surface, the sight lines and the visibility of the lights at night. He said that there are ten to twelve homeowners who view this as detrimental to the benefit of one developer.

David Himmelberger, 387 Linden Street, said that his understanding is that what was submitted was for the Board's determination on a special permit for two town houses. Mr. Adams said that the Petitioner characterized the proposed structure as a two-family dwelling. Mr. Himmelberger read the description of town house in the Zoning Bylaw. He said that, according to his reading of the plan, this is a defined town house as opposed to a two-family dwelling, as defined in the Zoning Bylaw. He said that under the General Residence bylaws, town houses are only allowed if they are three or more in number. He said that because this is not three or more units but it is a town house, it is not permissible under General Residence District.

Mr. Seegel said that this is a two-family dwelling that may have the same characteristics as a town house. He said that there is one dividing wall and each side is two plus stories. Mr. Himmelberger said that is defined in the Zoning Bylaw as a town house. He said that a two family has an upstairs and downstairs. He said that a side by side is a town house under the bylaw.

Mr. Himmelberger discussed the pending citizen's petition. He said that he was involved by representing the citizens who brought the petition. He said that there is a pending petition that will come before the Annual Town Meeting in March that says that in a General Residence District, for lots between 10,000 and 15,000 square feet, the maximum TLAG permissible is 3,600 square feet. He said that it is not that it is subject to LHR but that the metric of TLAG is used as a limit of size of what can be built in the General Residence District. He said that the bylaw change is pending and under Chapter 40A, Section 6, it serves to retroactively apply to no building permit being issued unless it is in compliance with future bylaw changes back to the first date of publication. He said that he had not seen the note from the Attorney General but to his knowledge the Attorney General does not have the ability to overturn a statute. He said that the statute is clear. He said that the reason for the retroactivity to notice of publication is to avoid a rush to create lots before a Zoning bylaw change. He said that this lot was created a week before the town changed the Zoning Bylaws that require frontage. He said that this is an example of what happens if it is not retroactively applied. He said that the statute was put in place after the town put in frontage requirements.

Mr. Himmelberger said that he believes that it is a town house. He said that a town house may contain two dwelling units but is not a two-family dwelling, as defined in the bylaw. He said that unless there is

adequate land to build three town houses, you cannot build town houses in a General Residence District. He said that he believes that the town houses that were built at Curve Street are three units. Mr. Corda said that that are built on three separate 10,000 square foot lots.

Mr. Levy asked Mr. Himmelberger about his understanding of LHR affecting lots in General Residence Districts. Mr. Himmelberger said that LHR only applies to Single Family Residence Districts. He said that the proposed bylaw only takes from LHR the method that TLAG is derived and applies that calculation to General Residence Districts and says that if you have a lot in the General Residence District between 10,000 and 15,000 square feet, the most that you can build is 3,600 square feet, as measured by TLAG calculations.

Mr. Seegel read the definition of Detached Dwelling in the Zoning Bylaw. He said that a detached dwelling can have two units. Mr. Himmelberger said that the bylaw talks about a dwelling in the singular. He said that the proposed structure will not have open space on the party wall, and that is what makes it a townhouse. He said that the town may have differentiated between town houses and two-family homes because a two-family home, by and large, looks like a single family home with a top and a bottom. He said that a town house looks like a row house and the town did not want to encourage row houses. Mr. Levy questioned why the town would allow three and not two town houses. Mr. Himmelberger said that there would be more land, 7,000 square feet per unit.

Mr. Seegel said that the Board should request an opinion from Town Counsel. He said that he did not see how the two things fit together.

Mr. Corda said that he spent a substantial amount of time going over the plans with Michael Grant, Building Inspector. Mr. Adams said that when someone questions Mr. Grant's opinion, they come to the Zoning Board.

Mr. Levy said that the Board would need to see the revised plans.

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

Paula Carens, 15 Oak Street, said that she lives in the Oak Place Town House Condominium Association. She said that there are five owners who abut this property. She said that she did not meet Mr. Corda until today. She said that she did not think that there was any outreach to the neighbors. Mr. Levy said that the Board encourages applicants to speak to the abutters but there is no requirement that they do that.

Mr. Levy read the Planning Board recommendations.

Mr. Levy asked if trees will be taken down. Mr. Corda said that a few unhealthy trees will be taken down. He said that is shown on a plan.

The Board discussed continuing the petition to December 5, 2019 or allowing the petition to be withdrawn without prejudice.

Mr. Levy said that the legal or factual issue for the Board is whether the proposed development will be substantially more detrimental to the neighborhood than the existing dwelling. He said that the neighbors seem to think that it is. He said that it is good evidence when the Board hears numerous objections from neighbors that this is not a proper project. He said that Mr. Corda may want to consider making this smaller or go down to a single family.

Mr. Corda said that, except for the neighbor directly in front and in back of the property, the properties to the left and right are multi families. Mr. Levy said that this is a unique lot. Mr. Corda said that the lot is private

and tucked away. He said that the lot is almost 12,000 square feet and has more open space than a normal 10,000 square foot lot. Mr. Levy said that the neighbors are claiming that this will impinge on their privacy.

Celeste Guarnieri, 23 Oak Street, said that her property sits in front of 25 Oak Street. She said that she spoke with Mr. Corda about positioning of the building and shifting it towards the right of way. She said that she shares Mr. Parker's concerns about scale, size, and privacy. She said that she is pleased with the change of position of the building from the standpoint of the driveway going along the side of her property as well as the right of way. She said that it seems like it is very busy. She said that she lives in the house that was built in 1952 by her grandparents. She said that she has been part of that neighborhood her entire life and she plans to be for the duration. She said that it means a lot to her what will go onto this particular lot. She said that she wants to work with the builder to try to find something that will fit and create a sense of neighborhood. She said that the residential setting is very important to her. She said that her preference is that it will be a single family. She said that condominium units seem to be popping up and changing the charm and setting of Oak Street, which has evolved. She asked that consideration be given to the position of the property. She said that she likes the idea of repositioning it to the right of way so that there is not the light spillage and busyness alongside her property, as well as having the right of way down that side. She said that she would like to see something put on the property that will speak to all of the concerns that Mr. Parker discussed. She said that she would like to have more information about the landscape so that she can see what the privacy border will look like as well as the greenspace.

Mr. Seegel said that Mr. Corda should think in terms of the mass and height of the building. He said that he was concerned about having a third floor occupied. He said that, in listening to the concerns of the neighbors, the higher that the building goes up, the more light spill there will be on neighboring properties. He said that Mr. Corda may want to consider withdrawing without prejudice and redesigning. Mr. Corda said that he would prefer to continue the petition.

Mr. Levy said that a landscape plan should be submitted that shows proposed screening. Mr. Corda said that he can submit a landscape plan. He said that there is barely any landscaping on the property now. He said that he will take down a couple of unhealthy trees. He said that he will be replacing nine inches of trees. He said that it is a fairly open lot with little shrubbery on it now. He said that he has a plan from an arborist.

Mr. Adams moved, Mr. Seegel seconded the motion, and the Board voted unanimously to continue the petition to December 5, 2019.

ZBA 2019-81, BRAD WERTHEIM, 32 BOULEVARD ROAD

Present at the public hearing were David Himmelberger, Esq., and Kent Duckham, Architect, and Brad Wertheim, the Petitioner.

Mr. Himmelberger said that Mr. Wertheim and his wife have lived at 32 Boulevard Road for five years. He said that the request is for a special permit to raze and reconstruct a pre-existing nonconforming house on a nonconforming lot of 6,080 square feet in a 10,000 square foot district. He said that the proposed house will not have setbacks any worse than the existing setbacks of 9.9 feet on the right side and 12.6 feet on the left side. He said that the lot area is 1,692 square feet and will be reduced slightly to 1,675 square feet, which is also a nonconformity. He said that the 1935 home went through Historical Commission Demolition Review and was deemed not preferably preserved. He said that the home was reviewed by the Wetlands Protection Committee (WPC) because it is within the 200 foot riverfront buffer. He said that an Order of Conditions was voted on October 3, 2019 and was issued on October 9, 2019. He said that the house is designed to complement the architectural style of many of the houses on the street. He said that it was purposely kept short at 29.5 feet. He said that it is an exceptionally narrow lot at 60 feet wide. He said that three letters were submitted from each of the abutters. He said that the abutters are present at the public hearing to offer their support for the project.

Mr. Seegel discussed tear downs on undersized lots and requirements for setbacks and lot coverage. He questioned whether this petition should be for a variance. Mr. Himmelberger referred to the two step process in Section 17 of the Zoning Bylaw for proposed changes to nonconforming structures. Mr. Levy said that the bylaw discussed alterations or additions and this is a replacement structure. He said that the goal of zoning is to try to make things more conforming. Mr. Himmelberger said that it has been the practice of the Board to determine that if it is not in compliance, it is not substantially more detrimental to the neighborhood.

Mr. Adams said that this lot is 60 feet in the front and 55 feet in the back, which would only allow a house that is 17 feet wide, absent a variance. He said that his perception is that the Board has granted special permits for properties that are teardowns. He said that the Board does encourage people to make the new structures as conforming as possible. He said that on a lot this small, it is hard to do that.

Mr. Himmelberger said that it is a change to the nonconforming dwelling and the Board has read that in the past that if cannot be compliant with the Zoning Bylaw, it goes to the next step, which is a finding of whether the proposed structure will be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Mr. Levy questioned whether you lose grandfathering if you tear the house down. Mr. Adams said that the Board has not found that when it has been the case of an undersized lot. Mr. Seegel said that he could support the petition as a special permit/finding.

Mr. Himmelberger said that the Planning Board made two comments in their recommendation that he wanted to address. He said that a concern was that the riparian setback did not jibe with the Town's GIS mapping system. He said that he raised that concern with the surveyor. He said that he believes that the Planning Board misread the plan. He said that the riparian boundary is at the back of the house. He said that the words, "200 Foot Outer Riparian", are outside of the zone and he believes that the Planning Board thought that was the zone because the town shows it going midway through the house. He said that the Petitioner's plan actually shows more of the area in the zone than the GIS.

Mr. Himmelberger said that the Planning Board had a concern about further reducing the footprint to eliminate the nonconformity. He said that was part of the trade off in building height. He said that the neighbors much prefer a lower building. He said that they could put the 152 square feet up in the attic but it would be a taller building. He said that the Petitioner believes that this is a beautifully designed building that is very complementary to the neighborhood. He said that the TLAG will be 3,045 square feet. He said that there is strong support of the neighbors for the project. He said that in every case, they have lessened the setback by a little amount, and the house is pushed back from its existing location so it has a nicer appeal to the street with a farmer's porch. He said that the request is that the Board make a determination that the proposed structure will not be substantially more detrimental and otherwise deserving of a special permit.

Mr. Levy said that he did not see any air conditioning compressors on the plans. Mr. Himmelberger said that they are shown on site plan at the right rear. Mr. Seegel said that the condensers are not in the setback.

Mr. Adams said that it is a nice design but the plans are hard to read.

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

Alyssa Mickle, 31 Boulevard Road, said that her house is to the right of 32 Boulevard Road, as you face the house. She said that she sent a letter of support. She said that the proposed design is in keeping with the current aesthetic and scale of the neighborhood. She said that it is a vast improvement over what happened at 35 Boulevard Road

David Pineau, 22 Intervale Road, said that he is the abutter behind 32 Boulevard Road. He said that Mr. Wertheim showed him the plans and he and his wife wholeheartedly approve of them. He said that it is aesthetically appealing, is to scale, and fits in with the neighborhood.

Mr. Seegel moved, Mr. Adams seconded the motion, and the Board voted unanimously to grant a special permit and make a finding that the proposed structure shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

As there was no further business to come before the Board, the hearing was adjourned at 9:51 pm.

Respectfully submitted,

Lenore R. Mahoney
Executive Secretary

DRAFT