

**ZONING BOARD OF APPEALS**

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

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WALTER B. ADAMS
DEREK B. REDGATE

November 7, 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

ZBA 2019-74, MICHAEL CHAMMAS, 1005 WORCESTER STREET

Present at the public hearing were Romeo Adams, Esq., Mike Chammas, the Petitioner, and Patrick Arnow, Metrowest Civil Engineering. Mr. Adams said that the relief that the Petitioner is seeking is to allow Mike's Auto & Gas to reallocate existing space to sell used cars. He said that Mr. Arnow produced the survey that is before the Board tonight. He said that the Petitioner originally thought that he had enough room for 15 spaces for used cars. He said that after getting Mr. Arnow's input, the Petitioner realized that he only has room for 10 spaces. He said that they are seeking waivers from the Board that would allow Mike's Auto & Gas to continue to provide services to sell used cars. He said that Mike's has been serving the community for 40 years.

Mr. Adams said that the request is for a waiver to allow access to the gas station from the private street that is maintained for snow and leaf removal by Mr. Chammas. He said that there is one other business and one residence on the street.

Mr. Adams said that the request is for a waiver to allow the seven cars that are parked on the east side to be able to be moved back and forth by employees. He said that TD Bank is across from Mike's. He said that frequently cars exiting the bank go into the gas station space, which creates potential for an accident. He said that by putting the cars on the line that is beyond the five foot setback, it creates a safety barrier as well as allowing the cars to be lined up in a way that was recommended by the engineer.

Mr. Adams said that the three cars that are shown on the northern side of the diagram will only be moved by employees.

Mr. Adams said that granting Mr. Chammas the waivers will allow him to continue to provide service to the community with an extended service line.

Mr. Seegel asked about the size of the parking spaces facing Edgemoor Avenue. Mr. Arnow said that they are 8.5 feet by 18 feet. Mr. Adams said that they used the specifications in the bylaw.

Mr. Seegel said that he went back out to the site for a second time and is troubled by that many spaces. He said that it really overburdens the parcel. He said that it might be appropriate to have six spaces on the Edgemoor Avenue side but not behind the building. He said that there is a trash container back there and from his observations, the business needs to use the space at the back.

Mr. Adams said that the space that they would like to use for the sale of cars currently has junk cars on it. He said that a plan shows where the functions will move to.

Mr. Arnow said that there is quite a bit of space where you could put cars. Mr. Sheffield confirmed that the spaces on the Natick side are for serviced vehicles. Mr. Adams said that the cars for sale will be located on the Wellesley side of the property.

Mr. Sheffield asked if the Petitioner considered having angled parking rather than 90 degree parking to Edgemoor Avenue. Mr. Arnow said that 90 degrees seemed to work better. He said that if you were to angle the spaces, one of them would be harder to get in and out of. Mr. Sheffield said that it may be a better angle for marketing the sale of used cars.

Mr. Becker asked how many employees there are for the gas and repair operations and how many are anticipated for the sales operation.

Mr. Chammas said that there are a total of three employees and he does not anticipate hiring any more. He said that most of the advertisement for the cars will be online, on Craig's List, Facebook or Car Gurus. He said that it will be more of a place to store cars for sale, not show them. Mr. Becker confirmed that there is space to complete the paperwork if a sale goes through. Mr. Chammas said that there is an office and a waiting room inside the gas station.

Mr. Becker asked about the use of the three proposed spaces on the north side of the lot. Mr. Chammas said that it will be for cars for sale but those cars will be more in a place to store them until someone showed interest in them via text message, email or phone call.

Mr. Becker asked about employee parking. Mr. Adams said that they can park on the Natick side. Mr. Seegel said that at the last hearing the Petitioner said that was where the customers will park. He said that his concern is overburdening the site. Mr. Chammas said that there are a lot of cars on the site that should not be there. Mr. Seegel said that the cars have been there on the two occasions that the Board members have gone to the site over the past six weeks. He said that Mr. Chammas probably needs the space behind the station for employee parking, for access or for storing snow plowing equipment because it does not belong in the middle of the gas station. He said that he was comfortable with having six spaces on the Edgemoor Avenue side with a requirement that they be set back five feet from Edgemoor Avenue. He said that Edgemoor Avenue is used as access for emergency vehicles to get to the bank, the business behind and the condominiums on the hill behind.

Mr. Becker confirmed that there are underground storage tanks for the gasoline that is sold at the station. He asked where fill points are. Mr. Arnow said that they are located under the concrete pads indicated on the plan. Mr. Chammas described access to the underground tanks from the delivery truck. Mr. Becker said that the spaces that are closest to intersection of Worcester Street and Edgemoor Avenue restrict flow in and out of the gas operation. He said that he would favor a reduction in the number of spaces.

Mr. Sheffield said that access for gas customers is typically off of Worcester Street and not pulling into Edgemoor Avenue first. He said that angled parking there would relieve the distance off of Edgemoor

Avenue and would allow for better presentation for sales. He said that the three spaces at the back should be eliminated because there seems to be more of a daily requirement for the dumpster and whatever else is happening on the site during normal operations.

Mr. Becker said that at the last hearing the Board was told that cars parked on the Natick side were awaiting service or pick up and the spaces and cars that were shown in the photograph that was submitted along the eastern side of the site were junk cars that were waiting to be hauled away. Mr. Chammas said that those cars were junked. Mr. Becker said that storage of junk cars is not an allowed use and the current permit does not cover that. He said that there should be no junk cars stored on the property. Mr. Adams said that a junk car is a car that has been deemed to be junk and can be picked up same day. Mr. Chammas said that it may take a day or two for the customer to clean the car out once they have decided that it is junk. He said that if he has a more important use for the space, he can have it gone in 20 minutes to a junk yard in Natick.

Mr. Becker asked about the business model for selling used cars. Mr. Chammas said that most of the car sales take place online where a picture of the car or a video is uploaded, the customer checks with Car Fax and then comes to the site ready to buy the vehicle. Mr. Becker asked what controls the number of cars.

Mr. Seegel asked what will happen if three people arrive at the same time to look at cars. He asked where they will they park. He said that the entire site will be used. He said that Mr. Chammas will not be able to accommodate his customers. He said that Mr. Chammas is asking for too many spaces. He said that he did not object to Mr. Chammas using his property for the sale of used cars but has a strong objection to the number of used cars that he wants to sell and where they will be placed. He said that when a big tanker comes in to fill the underground tanks, there is no way that they can make a right turn off of Worcester Street over the pad. He said that they will probably come in at the corner near Edgemoor Avenue and park as far away from the pad as is reasonable so that the hoses reach the fill pipes. He said that he is very concerned about where the spaces will be located.

Mr. Adams asked if the Board would consider eight spaces. Mr. Seegel discussed eliminating two out of three at the back. He said that he did not see how they could get more than four to five spaces facing Edgemoor Avenue. Mr. Becker said that the issue is the three cars closest to Worcester Street.

Mr. Chammas said that he orders the gasoline and knows when the tankers will be coming. He said that all gas deliveries happen at night. He said that he could easily move the cars to the other side of the site or put them in the garage.

Mr. Sheffield said that eight cars could probably work along the edge. He said that angled parking would be better in terms of sales and space. He confirmed that the spaces will not be marked on the ground. He said that Mr. Chammas has the ability to move things around on the site to accommodate deliveries.

Mr. Becker said that the proposal is to intensify the use of the property in ways that leave no flexibility for unanticipated events. Mr. Seegel asked how a fire engine would access the site. He said that they may need Edgemoor Avenue to turn around or come across. He said that the site is 7,700 square feet, it is nonconforming to begin with. He said that Mr. Chammas should reduce the number down to six or seven spaces.

Mr. Sheffield asked what has driven the numbers. Mr. Adams said that the worked with an engineer who determined that is what will fit.

Mr. Seegel discussed eliminating two spaces near Route 9 and one of the three at the rear so that the area at the rear can be used for ancillary purposes for the garage. Mr. Becker said that he supported eliminating two near Route 9.

Mr. Seegel said that Mr. Chammas has many loyal customers at the garage. He said that he was concerned that the proposed plan may cause problems for customers getting in and out of the site. He said that employees will be busy moving cars when they should be repairing cars. He discussed concerns about snow storage and where the plow will be stored.

Mr. Becker discussed the requested Zoning waivers. He said that the Zoning bylaw does not contemplate waivers but authorizes the Board to grant special permits and variances.

Mr. Seegel asked if having five spaces facing Edgemoor Avenue and one at the back would be acceptable to Mr. Chammas. Mr. Chammas said that would be acceptable. Mr. Sheffield said that Mr. Chammas might want to consider angled parking for presentation of the vehicles and ease of customers. He said that there is a massive puddle that always exists on Edgemoor Avenue. He said that the neighboring business uses a lot of water in its operation and there is no catch basin.

Mr. Becker asked about striping on the pavement. Mr. Chammas said that there will be no striping. Mr. Becker asked how Mr. Chammas will limit the number of vehicles to what is allowed by the permit. Mr. Chammas said that he will only buy six cars. He said that he can put striping on the pavement if the Board asks for it. Mr. Becker said that it is not typical to have used cars sales backed up to the street. Mr. Seegel said that there should be striping that includes a setback to Edgemoor Avenue. Mr. Becker said that there is no space for a setback there. Mr. Sheffield asked about creating a box to define an area for the sale of used cars. The Board discussed having a plan that shows the distance from Worcester Street. He said that having something on pavement makes it enforceable. The Board said that the space to the first car from Worcester Street is approximately 15 feet. The Board said that removing two spaces would push the space back to approximately 30 feet.

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

Mr. Seegel moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to grant a special permit that will not run with the land but will run with Mr. Chammas, as owner of the property, to park six vehicles with the nearest vehicle being no closer than 30 feet to Worcester Street and only one vehicle parked towards the rear of the building but as close to Edgemoor Avenue as practicable, and that lines should be installed between the spaces, with no parking between the last approved space and Worcester Street. The proposed use to sell used cars requires a permit from the Board of Selectmen.

ZBA 2019-78, STEPHEN MAIMONE, 9 GRANITE STREET

Present at the public hearing were Stephen Maimone, the Petitioner, and Ralph Kilfoyle, Architect.

Mr. Levy asked what has changed since the previous hearing. Mr. Maimone said that he submitted TLAG calculations and a Tree Protection Plan. –

Mr. Levy said that the footprint of the building has not changed. He said that the new plan that was submitted was dated five days prior to the last plan. Mr. Maimone said that he had it with him at the previous hearing but the Board said that he would have to re-submit it.

Mr. Levy said that the Board had asked for a plan that shows the trees and the utility pole. He said that six of 15 trees will be removed. Mr. Seegel said that the trees to be removed are the major trees. He said that the ones that will be saved are no more than two to three inches in diameter. He questioned why trees one, two and seven have to be removed.

Mr. Seegel said that he did not think that he could approve the circular drive around the front of the house.

Mr. Adams said that the Board had asked Mr. Maimone to consider scaling the building back. Mr. Maimone said that he showed the plans to the surveyor and the architect and they assured him that they can fit the building in the proposed location. Mr. Adams said that the issue is more of a consideration that putting a building at the proposed size would be more detrimental to the neighborhood. He said that with less than two inch forgiveness on the side yard setbacks, it tells the Board that the plan is to put as big amount of square footage as possible and the question is whether that is appropriate for this lot. Mr. Maimone said that in both instances, that will be the worst case scenario. He said that it tapers as it goes back.

Mr. Kilfoyle said that there is an angle on the lot line that makes it difficult to work with the existing footprint of the home. He said that they had to max out the width to fit the garage and small mudroom. Mr. Adams said that the garage appears to have more space than it needs for two rather large cars. Mr. Kilfoyle said that the door from the driveway is necessary for convenience instead of having to always use the front door. Mr. Adams said that you can get in to the garage from the house. Mr. Maimone said that the kids may use the door to get to their bikes. Mr. Seegel said that the garage could be a foot less wide. Mr. Adams said that the people door could open out. Mr. Kilfoyle said that it is better to have the door open in for security reasons.

Mr. Seegel said that moving the vehicles a foot to the left will provide the same amount of space for them. He said that it will settle the issue that Mr. Adams is concerned about with putting the foundation up to the setback line.

Mr. Adams said that he was concerned that Mr. Maimone had not heard the Board when it said that the house was too much for the property. He said that the TLAG will be pretty much maxed out. He said that the Board got comments from neighbors who have some concerns as well.

Mr. Seegel said that, in view of the height of the house and the topography of the land, he was troubled by the three windows in the front of the master bedroom. He said that they will be looking out into all of the bedrooms around it.

Mr. Adams said that the Board regularly gets requests from owners who are trying to maximize the use of their property. He said that this is a nonconforming lot and building and the Board's standard comes down to whether the proposed construction will be more detrimental to the neighborhood.

Mr. Levy read an excerpt from the minutes from the previous hearing.

Mr. Seegel said that the Board is looking at the size and mass on this lot and how it affects the neighbors. He said that the way that it is currently designed, it would be hard for the Board to not find that it would be substantially more detrimental to the neighborhood.

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 submitted a letter to the Board expressing her concerns. She said that not having the circular drive relieves one of her biggest concerns. She said that because there is 14.7 feet on one side, it takes up that much more space than a conforming home. She said that it seems to be much bigger than what she sees in the neighborhood. She said that additions in the neighborhood are typically set back by a few feet from the main portion of the house or are in the back, which lessens the impact. She read comments from her six year old regarding trees.

Patrick de Fontnovelle, 50 Summit Road, said that he and his wife agree with Ms. Kaplan Lee. Mr. Adams said that Ms. Kaplan Lee provided the Board photographs of a number of homes in the neighborhood with additions to the rear and off to the side, which does not have as much impact on the streetscape. He said that

the street is a tiny private way and Mr. Maimone is proposing a much larger home that will affect the streetscape. He asked that Mr. Maimone reconsider his plans.

Mr. Levy said that the legal standard that the Board has to consider is whether the proposed alteration will be substantially more detrimental to the neighborhood.

Mr. Adams said that Mr. Maimone should look at his plans in a more global way. He said that the proposed structure is too big for the lot. He suggested that Mr. Maimone find a way to make it not so imposing on the neighborhood.

Mr. Seegel said that there is space in the backyard to build. Mr. Kilfoyle said that they can hide a lot of the new living space out back but Mr. Maimone really wants to get a garage to work, which is triggering the massing and maxing out on the setbacks. He said that it is difficult to solve. He said the you need to take the existing and proposed floor plans into consideration. He said that you cannot always hide an addition.

Mr. Seegel said that if this was a flat lot and not raised as much as it is, the bulk and mass would not be as bad. He said that it is up substantially from the grade of the street, which is one of the reasons that the neighbors find it objectionable and the Board has a problem with it.

Mr. Levy said that the proposal is to more than double the lot coverage. Mr. Adams said that on the front elevation they are increasing the width and height by more than a third. He said that he had not heard anything explaining why they need a garage of the size that is proposed. He said that they should look carefully at that part of it again. He suggested some changes that could help with the design.

Mr. Levy discussed options for moving forward with the petition. Mr. Kilfoyle said that the Applicant would like to redesign the project and speak with the neighbors before coming back before the Board.

Mr. Seegel suggest that the petition be withdrawn without prejudice to allow the Petitioner time to redesign and share with the neighbors.

Mr. Adams moved, Mr. Seegel seconded the motion, and the Board voted unanimously to continue the hearing to February 6, 2020.

ZBA 2019-83, MATTHEW & JANELLE WERGER, 18 ABERDEEN ROAD

Present at the public hearing were Matthew and Janelle Werger, the Petitioner. Mr. Werger said that the request is for relief for four inches for an existing deck that was built a few months ago. He said that the lot is nonconforming and the deck is less than four inches into the setback, eight feet less nonconforming than the existing house that was built in 1935.

Mr. Werger said that the deck was built on part of an existing footing. He said that they have pictures that show that the railing was put back in almost the same spot. He said that when the final survey was done, it was discovered that the deck had been moved four to six inches from the original plan.

Mr. Becker said that the architectural plan has different dimensions than the original plan that was part of the building permit. He asked what changed as part of that process. Mr. Werger said that there was no change in the plan but how it was executed by the builder was changed.

Ms. Werger said that there was an existing landing off of the kitchen and the builder went off of those lines. She said that the builder may not have measured. She said that they were surprised when the final survey was done and it was a couple of inches off.

Mr. Sheffield said that the request is de minimis.

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

ZBA 2018-84, JOHN HANCOCK FINANCIAL, 55 WILLIAM STREET

There was no present at the public hearing representing John Hancock Financial, the Petitioner.

Mr. Levy said that the special permit expired in September but the Petitioner filed for extension before its expiration.

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. Becker said that a condition should be added to the existing conditions that the outdoor area shall be kept free of litter and debris.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to renew the special permit subject to the same conditions and a new condition that the outdoor area shall be kept free of litter and debris. —

Mr. Sheffield read a description of the operation that was the subject of the special permit for the benefit of the public at the hearing.

ZBA 2019-85, STRALY REALTY, 339 WASHINGTON STREET

Present at the public hearing was Laurence Shind, Esq., representing Straly Realty Corp., who said that the request is for renewal of a special permit for outdoor seating at Caffe Nero at 339 Washington Street. He said that this is the second renewal. He said that the Board granted an original one year permit which was renewed for two years. He said that they are seeking another renewal. He said that there has been no change to the operation since the last. He asked that the Board consider granting renewal of the special permit for longer than two years.

Mr. Levy said that the current conditions including something about a temporary sign. Mr. Shind said that the sign is not currently there. He said that initially the sign was there on a short term basis.

Mr. Becker said that the parking does not work. He said that he went there on three occasions and on each occasion there were five cars parked there. He said that only one of the five cars actually pulled forward enough so that the bumper overhung the curb. He said that one on of the occasions there was a Chevy Suburban parked in the last spot and there was a car backing up to get out of the parking lot because they either could not or did not feel confident about getting through. He said that he was no sure if parking is part of this approval but sooner or later something has to be done about it. He suggested marking the last space as compact and to have signage that indicates that. Mr. Shind said that the parking is owned by the town. He said that his client's property only goes to the edge of the curbing. Mr. Levy said that there was a condition that the last parking space shall be redesigned as a compact parking space. Mr. Becker said that

there is nothing in the lot that indicates that is a compact space. Mr. Levy said that the Town's Assessor's Map shows that the lot is the building. He said that it is a difficult place to navigate at commuting hours.

The Board discussed having a requirement for a sign on the property to indicate the compact space. Mr. Sheffield said that a sign can be attached to the building.

Mr. Becker read the Planning Board recommendation. Catherine Johnson, Planning Board, said that there is a new business in town, Stretch Medicine, which just opened on Central Street. She said that for a week and a half they set up a large tent awning at the patio, moving the tables back towards the tracks. She said that they also put a noncompliant 2 foot by 10 foot vertical sign where the post boxes are at the sidewalk. She said that they were asked and did remove the sign. She said that the awning stayed. She said that it was a sort of sublet of the space and a nice way to introduce them to the community but it created congestion. Mr. Levy said that the patio should only be used by patrons of the business.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to grant renewal of the special permit, subject to the same conditions, amended to include a condition for a permanent sign on the building or window signage to designate a compact space at the last parking space on the left facing the building, patrons' use only of the patio, and increased duration to three years.

ZBA 2019-86, JANET HOWE, 5 BROOKFIELD ROAD

Present at the public hearing were Janet Howe, the Petitioner, and Kara Kressy, Architect.

Ms. Howe said that the proposal is to expand her laundry room into the setback by two feet. She said that currently there are stairs and a deck area. She said that there is a door going into the laundry room that she does not use. She said that a year and a half ago a massive house was built next door. She said that the door used to look out at trees but now looks at the house. She said that the neighbors are thrilled that Ms. Howe wants to close up that door. She said that she is hoping to put a closet in the laundry room.

Ms. Howe said that she is hoping to expand out onto a pre-existing nonconforming roof on the second floor by three feet for a master bathroom.

Ms. Howe said that she is looking to add 64 square feet to an old house. She said that there is new construction on both sides of her.

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

Mr. Sheffield said that the Board received letters of support from three of the neighbors.

Mr. Becker read the Planning Board recommendation.

Mr. Sheffield moved, Mr. Levy seconded the motion, and the Board voted unanimously to approve the additions, as presented.

ZBA 2019-87, JEREMY & CAROLYN KORNWITZ, 10 RICE STREET

Present at the public hearing were Jeremy Kornwitz, the Petitioner, and David Kornwitz. Mr. J. Kornwitz said that the request is for a special permit to demolish an existing nonconforming structure and rebuild a new two-story house with less than required side yard setbacks. He said that the proposed structure will improve the side yard setbacks by approximately six inches on each side and will meet the front and rear yard setbacks.

Mr. Becker read the Planning Board recommendation.

Mr. J. Kornwitz said that he sent the TLAG calculations for the attic to the Board yesterday. Mr. D. Kornwitz said that the attic added 434 square feet, bring the total to 3,200 square feet, well below the threshold of 3,600 square feet. Mr. Becker said that 3,600 square feet is predicated on a 10,000 square foot lot. He said that the Planning Board was saying that this house fills up this lot, notwithstanding what the table says about minimums. He said that the Board uses TLAG as a measure of whether it will be more detrimental to the neighborhood. He said that the Planning Board was comfortable with the size of the house and the front yard setbacks but were concerned about the side yard setbacks. Mr. J. Kornwitz said that it is his preference to center the home on the lot because it would be a better aesthetic from the street. He said that centering it would cut into the other side yard setback and would require a variance, which is a harder hurdle to clear.

Mr. D. Kornwitz said that each of the side yard setbacks are improved by four to six inches. He said that on one side it is approximately four feet and on the other it is just under 16 feet. He said that it would be Jeremy's preference to have 10 foot setbacks on each side, which improves the right side yard setback but decreases the left side yard setback. He said that the property that is located on the left side is further set back than the property on the right side. He said that, in terms of aesthetics, centering it would be desirable.

Mr. D. Kornwitz said that the width of the house is just enough to accommodate a garage and a very small entryway. He said that they probably could not fit a two car garage if they were to make it smaller.

Mr. Levy said that it will be a lot of garage from the street. He said that they will be almost doubling the size of the footprint. Mr. D. Kornwitz said that it is a small home with three bedrooms.

Mr. Levy discussed granting a special permit to center the structure in the context of the Bellalta v Brookline case.

Mr. Becker said that the existing side yard setbacks are shown on the survey as 3.6 feet on the right side and 15.4 feet on the left side, which is nonconforming on both sides. He said that the lot size and frontage are nonconforming. He said that the property is located in a General Residence District, where the setbacks are not defined.

Mr. D. Kornwitz said that the proposed structure will be significantly further back from either of the abutting neighbors.

Mr. Becker said that central to this case is the Bellalta Decision. Mr. Levy said there may be a basis for a variance, due to the shape. He said that, from a land use perspective, it makes the most sense to center the structure. Mr. Sheffield said that it also makes sense in terms of buildability. Mr. Becker said that it makes more sense from a neighborhood perspective. He said that any action that the Board could take on the plan that was submitted, they could also take for a structure that is centered on the lot. He said that the Planning Board recommended that the Applicant do some additional redesign and come back before the Board. He said that he did not want to condition the proposal that was submitted because there could be some unintended consequences. He said that doing design work and seeing that it works makes more sense.

Mr. Levy asked if the Applicant intends to put in any air conditioning condensers. He said that they will have to be in the legal setback of 20 feet from the side property lines. He said that the Board is not granting relief for them with this special permit.

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

Mr. Becker said that the proposed structure does not have to be exactly centered on the lot. Mr. Levy asked that the Applicant look at moving the structure back where the lot is wider. Mr. J. Kornwitz said that they tried to line the houses up with the other houses on the street.

Mr. Sheffield said that the two-car garage takes up approximately two-thirds of the front elevation. He said that if they have to have a single door, it could be designed to look like two doors, and that would dramatically change the scale of the building. He said that the garage door dominates the entire house. Mr. Becker said that it is the only element that is predominantly horizontal. Mr. Sheffield said that there are some design tricks that can be done to mitigate that.

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

Peter Cassidy, 14 Grant Avenue, said that he is an abutter. He said that Mr. Kornwitz is a wonderful neighbor. He said that Mr. Kornwitz showed him the plans, which will be an improvement to what is there now. He said that his only request is, as a concession for the nonconforming lot and new structure, for replacement of the existing six foot fence at the back with an eight foot fence with screening plantings. He said that it continues with 6 and 8 Rice Street. He said that the proposed structure will be at least seven feet taller than the existing structure. He asked what his rights are with respect to his request. Mr. Levy said that Mr. Cassidy has the right to appeal a decision of the Zoning Board to Land or Superior Court. Mr. Sheffield said that the bylaw does not regulate neighborly courtesy. He said that the Zoning Board encourages applicants to be good neighbors with their plans.

Mr. D. Kornwitz said that Jeremy spoke with all of the abutters and no one expressed concerns.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to continue the hearing to February 6, 2020.

ZBA 2019-88, BRIAN & CAROLYN O'BOYLE, 36 PINE STREET

Present at the public hearing were David Himmelberger, Esq., Keri Murray, Architect, Carolyn and Brian O'Boyle, the Petitioner.

Mr. Himmelberger said that the request is for a special permit to extend a nonconforming garage four feet into the setback. He said that currently the garage is just over 19 feet. He said that the proposal is to replace the garage with a 24 foot wide garage that will bring it into the setback at 15 feet. He said that the Bellalta Case in Brookline has bearing on this petition because the Petitioner is seeking to extend a nonconformity. He said that the hope is that the Board will agree that this will not be substantially more detrimental to the neighborhood.

Mr. Himmelberger said that the existing house is a one and a half story cape, standing approximately 16 feet tall. He said that the proposed structure will only be 23 feet tall. He said that the existing TLAG is 2,551 square feet and 855 square feet, or 17 percent, will be added for a grand total of 2,986 square feet, which is well below the threshold for Large House Review in a 15,000 square foot district.

Mr. Himmelberger said that the house to the left sits up about three to four feet higher and is a significantly taller house that sits back 25 feet from the lot line. He said that there is a significant wall of very mature arbor vitae that sit between the garage and the neighbor at 32 Pine Street. He displayed photographs of the existing garage and significant screening. He said that the neighbors at 32 Pine Street are one of the three abutter who wrote a letter of support. He read an excerpt from the letter from the Brennan's at 32 Pine Street.

Mr. Himmelberger said that this is one of the smaller homes on a street which some significant grand Victorians and Dutch Colonials. He said that it will keep its aesthetic style with one and a half stories.

Mr. Becker said that the garage is attached to the house and is nonconforming on that side. He said that the proposed design is driven by what is upstairs. He asked why the request is to take four more feet in the setback space. Mr. Himmelberger said that the purpose is to make the garage functional. He said that it is currently 20 feet wide. He said that the proposed bedroom with dormers that is proposed above the garage is not deep. He said that the dormers will be at the eave line into the roof. He said that the Petitioner is looking to functional space on the second floor.

Ms. Murray said that the way that the current house is sited, the way that the kitchen, mudroom and garage exist, the pitch of the roof and the height of the dormers, it would not be possible for a passageway to the new addition without modifying the roof that would require some modifications to the first floor as well. She said that this will allow the mass of the structure to look proportionally correct from the street, when tying the two structures together. She said that increasing the width of the garage to 24 feet is standard for two vehicles and helps the roofs to tie together on the second floor. She said that they are trying to keep the pitch aesthetically desirable and not too flat. She said that they are trying to make the aesthetics work, given the existing conditions and without disrupting the existing cape.

Mr. Sheffield said that Plan A0.09 shows the existing house with the dormers extending out on to the roof. He said that the new portion is drawn differently. He said that the plan is drawn with the walls going up higher.

Mr. Sheffield said that the plan abandons the front door. He said that there is a lot of energy with the dormers and the façade of the garage and the cupola. He said that an element could be added that is consistent with the overall design of the house.

Mr. Becker said that the garage dominates the front elevation. He said that it looks like a small house attached to a garage. Mr. Himmelberger said that the O'Boyle's are amenable to adding a modest but attractive front portico that would call attention and add some eye catch to the front.

Mr. Levy confirmed that the left side yard setback is the only nonconformity. He said that the portico would be subject to the 500 Foot Rule.

Mr. Becker read the Planning Board recommendation.

Mr. Becker said that when he first looked at the proposal, he thought that going from 19 to fifteen feet was a lot. He said that he questioned how much would be too much in terms of the Bellalta v Brookline Case. Mr. Himmelberger said that it is a case by case evaluation that relates to the context of the neighborhood and mature and natural screening that is already in place. He said that there is a very substantial home to the left at 32 Pine Street with a 25 foot setback to the property line, which would add up to 40 feet with the 15 foot setback at 36 Pine Street. He said that it will have a minimal visual impact. He said that the property is upgrade and is well screened. He said that taken in total, this will not be substantially more detrimental and the neighbors are supportive.

Mr. Becker said that the lot sizes in the Pine Street neighborhood range from 11,000 to 31,500 square feet. He said that half of the houses do not meet the minimum lot size requirement. He said that the Board typically looks at proposed TLAG and how it compares to the rest of the neighborhood. He said that the average TLA in the neighborhood is approximately 3,800 square feet and the TLA for this property is 2,200 square feet. Mr. Himmelberger said that the TLAG of this property is 2,551 square feet and will increase to 2,986 square feet.

Mr. Becker said that the proposed structure will not be out of the ordinary but he is still concerned about the 15 foot setback. Mr. Himmelberger said that the focus should be on the 15 feet not being substantially more detrimental, given its proximity and height.

Mr. Sheffield said that the dormers on the side are flush with the facade of the first floor, which enlarges the scale of the building. He said that the design will call for more downspouts. Ms. Murray said that she can pull the dormers back so that they are slightly more in line with the ones that are represented at the front. Mr. Sheffield said that they should be pulled back to where a continuous gutter will work. He said that he can understand drawing the dormers in the same plane but when they are 15 feet from the property line, it becomes a scale issue. Ms. Murray said that she was designing in context with the cape and how it relates to other houses in the neighborhood. She said that if it helps with the setback issue, the homeowner is willing to pull the dormers back.

Mr. Levy said that the air conditioning condensers on the right side appear to be violating the setback requirement. Mr. Himmelberger said that the units are existing.

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

Mr. Levy said that his concern is that the Petitioner is using a seven inch encroachment to create a five foot encroachment by special permit. Mr. Becker said that the only case where the Board applied *Bellalta v Brookline* was 8 Lawrence Road and those were different circumstances. Mr. Himmelberger said that *Bellalta v Brookline* is good law, according to Town Counsel. He said that when there is a proposal that seeks to increase a nonconformity, it requires the Board to make a finding that it is not substantially more detrimental.

Mr. Himmelberger said that he takes Mr. Sheffield's points about the portico over the doorway to add balance and address the Chair's concerns. He said that the Applicant is willing to pull the dormers off of the eave line to further soften any sense on that side.

The Board discussed the Planning Board concern about a curb cut. Mr. Levy said that the Board will not be granting any relief for that.

Mr. Sheffield said that, given the neighborhood, not only on this street but on adjacent streets, the proposed size is not more detrimental to the neighborhood.

Mr. Himmelberger said that the Board can say that the proposed structure is not substantially more detrimental to the neighborhood, even if they do not agree completely with Mr. Sheffield's opinion. He said that some weight should be given to the abutters. He said that there will still be a wide expanse between the two buildings even if the proposed structure is permitted. He said that screening is already there and is robust.

Ms. Murray said that the intention is to preserve the cape house.

Mr. Levy said that the Zoning Board's task is to make houses more conforming. Mr. Himmelberger said that it is a question of scale and perspective. He said that in this particular case, the 15 feet is not so close to the property line as to be significantly more detrimental. He said that it will be a 1.5 story structure where the owners agree to pull the dormers back.

Mr. Becker said that he did not think that 15 feet is the right answer.

Mr. Himmelberger said that in the full totality of the context in this case with the siting with the house next door, 15 feet for a 1.5 story structure on a 23 foot tall peak is not substantially more detrimental.

Mr. Levy said that he is most concerned about morphing a slight nonconformity into what is a significant one. He said that the Planning Board comments were another objective view. He questioned whether there is a compromise of less than five feet that could still work.

Mr. Sheffield said that what is proposed is a fairly standard size for a garage. He said that the garage has three windows, which helps with the scale to the neighbors.

Ms. Murray said that they are asking for a little bit more but are working to make sure that they are hitting minimal dimensions while meeting standards to make sure that the house is something that works. She said that they tried to keep the height in line with what is already there. She said that they tried to bring some design elements into it that mimic what is on the site. She said that the neighbors are in total support.

Mr. Becker said that what is proposed clearly increases the nonconformity. Mr. Levy said that the town has determined that the appropriate setback is 20 feet in this district. He said that the Board is struggling with the request to exacerbate that by five feet. Mr. Himmelberger said that the Applicant's contention is that the proposed structure will not be substantially more detrimental. He said that there is no precedence in Zoning. He said that the Board has the ability to make that determination when it is appropriate. He said that there is some aspect in design that goes into that determination. He asked the Board to give great weight to Mr. Sheffield's observations.

Mr. Becker asked that the Applicant come back with a solution that is less than five feet. He said that there were unique circumstances at 8 Lawrence Road. He said that here this is an average special permit application, only it takes what was a minor nonconformity and makes it 25 percent of the allowed setback. Mr. Himmelberger said that in this setting it is okay in the sense that it will not be substantially more detrimental.

Ms. Murray said that there are no elements on the garage that are oversized to make reducing it easy. She said that it may change other aesthetics. Mr. Becker said that the request is for the Board to allow a change to a bylaw requirement for the sake of aesthetics. He said that he believes that a house can be designed with more than a 15 foot setback that addresses the homeowner's needs.

Mr. Himmelberger requested that the petition be allowed to be continued so that the Applicant can take on the comments by the Board.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to continue the hearing to January 9, 2020.

ZBA 2019-89, BENJAMIN & CHRISTINA SCIRICA, 5 DAMIEN ROAD

Present at the public hearing was Christina Scirica, the Petitioner, who said that the request is to replace an existing shed in the back yard that is nonconforming with a similar shed with a larger footprint. She said that the side yard setback for the existing shed is 2.3 feet. She said that the new shed is deeper by 2.3 feet. She said that they propose to extend the depth further inward on the property so as to not affect the setback. She said that the shed will be two feet longer. She said that the shed is not visible to the abutting neighbor because of a mature tree line. She said that the shed will be 4.2 feet taller than the existing shed. She said that they reviewed all of the dimensions with their neighbors who abut each property line. She said that all of those neighbors have wholeheartedly endorsed the proposed shed. She said that they all agree that the proposed shed will be an aesthetic improvement. She said that the additional altitude brings it more in line with the adjacent garage. She said that it creates a more cohesive appearance. Mr. Becker confirmed that the proposed shed will be approximately the same height as the existing garage.

Mr. Becker read the Planning Board recommendation.

Mr. Sheffield said that he looked at a photograph and a drawing of the shed. He said that one has the doors on the gable end and one has the doors on the side. Ms. Scirica said that they are fine with either configuration as long as the footprint is similar. She said that the reason the drawing with the dimensions is different from the photograph is the photograph is the style that they would like to place in that location, however, the only way to get a sketch with dimensions was to use the company's website. She said that the dimensions will be as described. She said that they propose having the double doors on one end. Mr. Levy said that it will be four feet higher. He confirmed that there will be no second floor. Mr. Becker confirmed that the shed will be approximately the same height as the existing garage.

Mr. Sheffield asked if the doors will be at the gable end. Ms. Scirica said that they are willing to be flexible about location of the doors. Mr. Sheffield discussed having the doors on the side. Ms. Scirica said that the proposed location of the doors was to maximize the storage capacity of the shed. She said that if the doors are on the long side of the shed, they will lose some storage inside of the shed. Mr. Sheffield said that having the doors on the side would provide a more serviceable space and would allow the shed to be pulled further from the property line.

Mr. Levy asked if there is a reason why the shed cannot be behind the garage. Ms. Scirica said that they considered turning it 90 degrees and placing it along the back of the garage. She said that it would still be nonconforming. She said that centering the shed with the back wall of the garage would reduce the nonconformity but not eliminate it.

Mr. Levy said that the Board would like to see the shed pulled away from the property line. Ms. Scirica said that pulling the shed back to a 20 foot side yard setback takes it out of alignment with the garage and creates a gap where space will not be used.

Mr. Levy asked what the shed is used for. Ms. Scirica said that it is used for lawn tools, bicycles and cross country skis. She said that the garage is small and they can barely get two cars in there.

Mr. Levy said that the proposed shed seems to be a welcome replacement to the existing shed but it seems like there is a big back yard with a lot of area. Ms. Scirica said that they are trying to maximize the utility of the back yard space.

Mr. Becker read the Planning Board recommendation.

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

Mr. Levy said that the area is well screened.

Mr. Sheffield asked about the space between the existing shed and garage and the property line towards Damien Road. Ms. Scirica said that there are tall fir trees there. She said that the neighbors have trees that extend around the property line right behind the fence.

Ms. Scirica read letters of support from the neighbors.

Mr. Sheffield suggested moving the shed further to the south, not lined up, but with some corner relief at the garage and with the doors on the side. He said that the storage space would not be compromised much and it would be more convenient to the house. He said that will move it from the property line and create an opportunity for more plants along the property line.

Ms. Scirica said that the garage is 11.4 feet from the side property line and the width of the garage is 20.2 feet. Mr. Sheffield discussed moving the shed to 14 feet from the property line. Ms. Scirica said that would be acceptable.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to approve a special permit, subject to condition that the shed be no closer to the lot line than the garage, not lined up so that there is a break in the plane to the garage. Ms. Scirica suggested centering the shed behind the garage. Mr. Sheffield said that would be acceptable. He said that the doors can be on either side.

ZBA 2019-90, VINCENT & PATRICIA CERULLE, 12 INTERVALE ROAD

Mr. Becker read the Planning Board recommendation.

Present at the public hearing was Scott Vaughn, Architect, representing Vincent and Patricia Cerulle, the Petitioner. Mr. Vaughn said that the property is an undersized lot in a 10,000 square foot Single Residence District, with less than required side yard setbacks. He said that his clients bought the home, knowing that they would need to renovate it. He said that part of the renovation is to relocate an existing internal stair going up to attic space that is six feet six inches high. He said that raising the ridge line at all will require a special permit. He said that when demolition proceeded he received a letter from the engineer saying that the roof is not safe and will have to be replaced. He said that a hardship would be to have to rebuild the nonconforming height space. He said that the building will stay as a three bedroom but it is a relatively small space with low roof pitch in the upper bedroom area. He said that the request is to increase the height. He said that the goal is to keep the aesthetic of the building. He said that they maintained the roof slope on the front. He said that the new roof height will be 29.6 feet and the existing roof height is 20 feet 1 ½ inches. He said that the change will allow for full use of the second floor. He displayed an aerial photo of the property that shows that there are many trees on Intervale Road and the 12 Intervale Road is surrounded by 2.5 story buildings. He said that the plan is to bring the structure into conformance with the height of surrounding structures while preserving the character of the building.

Mr. Sheffield discussed differences in drawings that Mr. Vaughn displayed at the hearing and the drawings that were submitted to the Board. Mr. Vaughn said that he omitted a window over the stairwell in the drawing but it will be there.

Mr. Levy discussed the nonconformities. He said it is an undersized lot, has less than required side yard setbacks on both sides, and less than required front yard setbacks. He asked if the footprint will change. Mr. Becker said that the porch on the right side will be 25 square feet but is exempt for setback. He said that the front porch will be less than 50 square feet, so it will be exempt from setback requirements. Mr. Levy said that otherwise the proposed construction will not exacerbate the nonconforming setbacks.

Mr. Vaughn said that current the entrance to the home is off of the driveway. He said that they will move the steps from the side yard to the rear, thereby decreasing the impact to the neighborhood.

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

Mr. Levy said that lot coverage will increase due to the new porches. He said that the TLAG Affidavit was not signed.

Mr. Sheffield said that the basic change will be that they will be changing the roof from a six foot six inch ceiling height by adding to second floor to increase to building code height.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to allow the special permit, as presented.

ZBA 2019-91, YING XU & YANG SHEN, 259 WESTON ROAD

Present at the public hearing were Tom Timko, Architect and Ying Xu, the Petitioner.

Mr. Timko said that it is a somewhat larger lot in a 10,000 square foot Single Residence District with a nonconforming front yard setback. He said that the proposed work will be at the rear of the house and will be conforming. He said that the plan is to add approximately 1,200 square feet to a small house to provide a new kitchen and family room with a master suite above. He said that the proposed construction will be well below the TLAG requirement.

Ms. Xu said that the existing and proposed height will be the same. She said that it will not block any views from the neighborhood.

Mr. Sheffield suggested installing sliding doors to the deck rather than French doors.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to allow the special permit, as presented.

As there was no further business to come before the Board, the hearing was adjourned at 10:50 pm.

Respectfully submitted,

Lenore R. Mahoney
Executive Secretary

DRAFT