



## ZONING BOARD OF APPEALS

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ROBERT W. LEVY, VICE CHAIRMAN  
WALTER B. ADAMS  
DEREK B. REDGATE

February 6, 2020  
7:30 pm  
Juliani Meeting Room  
Town Hall

Zoning Board of Appeals Members Present: Robert W. Levy  
Walter B. Adams  
Derek B. Redgate  
David G. Sheffield

ZBA 2019-78, STEPHEN MAIMONE, 9 GRANITE STREET

Mr. Levy said that the Petitioner has requested that the petition be allowed to be withdrawn without prejudice.

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 Redgate seconded the motion, and the Board voted unanimously to allow the petition to be withdrawn without prejudice.

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

Mr. Levy said that the petition was continued from November 7, 2019. He said that one of the members who sat at that hearing was unable to attend tonight's hearing. He said that the petition will be heard de novo.

Present at the public hearing were Jeremy Kornwitz, the Petitioner, and David Kornwitz.

Mr. J. Kornwitz said that he and his wife are the owners of 10 Rice Street. He said that the request is for a special permit to demolish the existing home and rebuild on a nonconforming lot. He said that plans were submitted that incorporated all of the feedback from the November hearing, including placement of the air conditioning (ac) units that will meet setback requirements, that was achieved by reducing the size of the patio.

Mr. D. Kornwitz said that the Planning Board had an issue with encroachment of the setbacks in some areas more so than in other areas. He said that they suggested that the Petitioner try to center the home, which has been done. He said that the setbacks will be improved in many areas. He said that the rear and the front setbacks are conforming.

Mr. Levy said that, in addition to nonconforming left and right side setbacks, the lot is also undersized in a 10,000 square foot district.

Mr. Sheffield read an excerpt from the November 7, 2019 minutes. He said that he had recommended a change to the single garage door to appear as two garage doors. Mr. J. Kornwitz said that he discussed making that change with his builder and has mockups from the architect. Mr. Sheffield said that nothing was submitted to the Board showing that change. Mr. Levy said that the Petitioner is asking the Board to approve a set of plans. Mr. D. said that at the previous hearing, the Petitioner was told that there were two issues and it was just a commentary about the garage door. He said that the Petitioner dealt with the two issues. He said that two doors cannot fit on the garage. He said that the contractor said that he can get a door that looks like two doors. He said that they did not think that the garage door issue was part of the overall discussion about the two main issues that they understood to be the side yard setbacks, which were addressed, and the ac units which were also addressed. He said that they have had a discussion with the contractor and will get a door that looks like two. Mr. Levy said that the Board could make the change to the garage door a condition of approval.

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

Mr. Levy read the Planning Board recommendation.

Mr. Sheffield said that the size of the terrace at the back was reduced. Mr. D. Kornwitz said that it was reduced by half, from 30 to 15 feet.

Mr. Sheffield moved, Mr. Redgate seconded the motion, and the Board voted unanimously to grant a special permit, subject to a condition that the design of the garage façade has the appearance of two separate and distinct doors.

The Board discussed demolition and rebuilds with a special permit.

#### ZBA 2020-06, TERRILL AND LIANNA RAMAGE, 46 OVERBROOK DRIVE

Present at the public hearing were Lianna and Terrill Ramage, the Petitioner.

Ms. Ramage said that the request is for a special permit. She said that they initially planned to tear the house down but decided to work with what they have. She said that the plan is to demolish the existing garage and build a new two car garage with a second floor and build an addition at the rear of the house. She said that it is a nonconforming lot. Mr. Levy said that it is a 9,600 square foot lot in a 10,000 square foot district. He said that the left side yard setback is four inches too short and the front yard setback is three quarters of a foot too short.

Mr. Ramage said that the house is not centered on the lot. He said that the existing front setback on the left side of the house is 29.3 feet. He said that they will go straight across but the corner at the right front of the structure will have a setback of 29.5 feet. Ms. Ramage said that the house is not parallel to the street. Mr. Levy said that the Board will used 29.3 feet as the existing nonconformity and 29.5 feet would not create a new nonconformity.

Mr. Levy said that the Board received a comment from the DPW regarding the Town's existing sewer easement that runs along the southerly portion of the lot, which they asked be shown on the plan. He said a revised plan has been submitted. He said that the DPW commented on the existing shed that encroaches on the easement. Mr. Ramage said that the shed sits on block. Mr. Levy asked if it can be easily moved. He said that there was also a question of whether the shed is within the buffer zone of Reed's Pond. Ms. Ramage said that it is outside of the buffer zone.

Mr. Adams asked if the construction will affect the existing trees at the front of the house. Mr. Ramage said that he did not believe so. He said that they would prefer to keep the small flowering trees. Mr. Adams asked if it had been discussed with contractor. Mr. Ramage said that they do not have a contractor yet. He said that there is a tree that he would like to keep but it is leaning over the street and looks like it will not make it. Mr. Levy discussed the Tree Preservation Bylaw. He said that no decision of the ZBA tonight will affect the Petitioner's obligation to meet the requirements of that bylaw.

Mr. Redgate said that the Board typically gets existing and proposed floor plans and elevation drawings. He said that it looks like they were combined into one plan.

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

Mr. Levy read the Planning Board recommendation. He said that the Board will use 29.3 feet as the front yard setback.

Mr. Levy asked if any TLAG calculations had been done. Mr. Ramage said that they did not do them. Mr. Levy discussed inserting a condition that the TLAG not exceed the threshold 3,600 square feet.

Mr. Redgate said it was unclear if DPW wants the shed removed. He said that it is over 100 square feet and there is no special permit for it.

Mr. Redgate asked about the square footage of the first and second floor. Mr. Ramage said that the TLAG will probably be over 3,600 square feet. Mr. Levy said that under the bylaw, this Petition is exempt from Large House Review (LHR). He said that the Board uses the TLAG calculations as a guide to the size of the house. He said that the Board's determination is limited to whether the proposed renovation is substantially more detrimental to the neighborhood than the current structure. Mr. Redgate said that if the TLAG is over the threshold for a conforming lot, there should be some effort made to provide information that is standard for LHR, including landscaping and lighting.

Mr. Levy said that the Board can insert a condition that a TLAG Affidavit be submitted that shows that the TLAG will be under 3,600 square feet, or the hearing can be continued so that a completed TLAG Affidavit be submitted for the Board's consideration.

Mr. Adams asked if the Petitioner spoke with the neighbors about the plans. Mr. Ramage said that they have been speaking with the neighbors. Ms. Ramage said that most of the neighborhood houses are much larger.

Mr. Ramage said that his preference is to come back before the Board with TLAG calculations for the plans that were submitted.

Mr. Adams moved, Mr. Redgate seconded the motion, and the Board voted unanimously to continue the petition to March 5, 2020.

#### ZBA 2020-07-18, JEFFERSON ROAD 18 LLC, 18 JEFFERSON ROAD

Present at the public hearing were David Himmelberger, Esq., Reed Diamond and Nick Monahan, Managers, Jefferson Road 18 LLC, the Petitioner.

Mr. Himmelberger said that the request is for a special permit to construct a new home on a pre-existing nonconforming lot with less than required area at 10,582 square feet in a 15,000 square foot Single Residence District (SRD). He said that other than lot size, the proposed new home will be fully compliant with all Zoning dimensional requirements. He said that the TLAG of 4,153 square feet is below the Large House Review (LHR) threshold of 4,300 square feet in a 15,000 SRD. He said that the proposed new home

will have a ridge height of 26 feet 9 inches, with a height above average finished grade of 31 feet 8 inches, due to the existing slope.

Mr. Himmelberger said that he indicated in the transmittal letter that the original existing home was razed in November, 2019 with a demolition permit that was issued in error. He said that he attached the demolition permit printout that notes that the permit was mistakenly issued without the required ZBA approval. Mr. Levy asked if the permit was mistakenly applied for and mistakenly issued. He said that the Building Department issued a permit that the Applicant requested. Mr. Himmelberger said that he was quoting an email from the Building Department to his client that indicated that it was issued in error.

Mr. Himmelberger said that they submitted photographs floor plans and elevation drawings of the razed home.

Mr. Himmelberger said that the new home will increase lot coverage from 1,424 square feet, or 13.5 percent, to 1,901 square feet, or 17.97 percent, which is well within the permissible limits.

Mr. Himmelberger said that a Stormwater Report was submitted, even though it is not required for a special permit. He said that with the proposed infiltration system, there will be a decrease in stormwater rate and volume from the existing conditions, sometimes in excess of 50 percent.

Mr. Himmelberger said that the 20 foot tree yard in the right side yard and the rear yard will remain undisturbed and they will comply with the Tree Preservation Bylaw. He said that they submitted an Arborist Plan from Hartley Greymount to the Building Department with the building permit application.

Mr. Himmelberger said that, as the proposed home is fully dimensionally compliant, the Applicant is requesting that the Board make a finding it is not substantially more detrimental to the neighborhood than the pre-existing nonconforming structure.

Mr. Levy said that the Board has no way to evaluate what the previous nonconforming structure looked like and how it sat on the lot. He said that the Board members do site visits for preparation for the hearing. He said that the Board received comments from the abutters regarding the scale of the house. He said that the height of the house appears to be a significant concern.

Mr. Levy said that he did not necessarily agree with the Building Inspector. He said that he was not sure that a special permit is needed to demolish a house. He said that removing a house does not increase a nonconformity but does create a conformity. He said that the Board typically sees applications for teardowns prior to demolition. He questioned whether grandfathered status was lost by demolishing the house prior to applying for a special permit. He said that now they are relegated to whether just the lot is grandfathered. He said that there nothing before the Board that shows when the lot was created, whether it was in common ownership or whether there is a Zoning freeze. Mr. Himmelberger read an excerpt from Section 17 of the Zoning Bylaw. He said that this was never abandoned and there was no intent to abandon the nonconformity. He said that it has been clear all along that the Petition was seeking to build a new home. He said that the bylaw says that it has to be abandoned for more than two years for the bylaw to apply.

Mr. Adams said that once you tear something down, you lose the rights for it. He said that this Board has a long tradition of allowing Petitioners to request a special permit to tear down a building and replace with a similar use of a size, shape and height that, if the Board determines that it will not be substantially more detrimental to the neighborhood, it can approve. He questioned how once it is a vacant lot, rights are retained for nonconformities other than the lot. Mr. Himmelberger said that the nonconformity of the lot is directly related to having a home on it. He said that the Zoning Bylaw calls out the limit for discontinuation, abandoned or not used for not more than two years.

Mr. Levy said that a more convincing argument may be related to the lot, when it subdivided and that is was not in common ownership at the time. He said that once you tear down the house, you lose grandfathering. Mr. Himmelberger said that the Zoning Bylaw says that if the property has not been abandoned, then pre-existing nonconforming uses and structures on lots controls. He said that the Petitioner has to make a request that the Board make a finding that it will not be substantially more detrimental to the neighborhood than the pre-existing nonconforming structure. Mr. Levy questioned whether a tear down is considered abandonment of a structure. Mr. Adams said that just being vacant does not indicate abandoned. He said that the intent was to put another house on this lot. Mr. Himmelberger said that the application for a demolition permit with an accompanying building permit application shows that the intent all along was not to discontinue a single family home on the property but to rebuild one.

Mr. Redgate confirmed that the only nonconformity is the lot size. He confirmed that the house prior to tear down was compliant.

Mr. Levy said that the TLAG calculation is 4,153 square feet. He asked about the TLAG for the original house. Mr. Himmelberger said that the TLA from the Assessors was 1,983 square feet. He said that the garage was 380 square feet. He said that lot coverage for the original house was 1,424 square feet, going to 1,901 square feet, or 13.5 percent to 17.97 percent.

Mr. Redgate asked if inclusion of the stormwater system will result in removal of more trees. Mr. Mr. Himmelberger said that it will be without removal of the trees shown on the Existing Conditions Plan and the Civil Plan. He said that there will be more than 50 percent reduction in volume and rate of runoff.

Mr. Levy asked about the height of the original structure. Mr. Himmelberger said that the existing height was 31.18 feet above average grade. He said that the proposed height above average grade is 31 feet 8 inches. Mr. Levy said that it looks like a three story structure from the rear. Mr. Himmelberger said that it is on a steep slope.

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

Susan Wasilauskas, 242 Oakland Street, said that present with her were her husband, Richard, and her neighbor at 248 Oakland Street, Dorothy Ellis. She said that they directly abut the rear of 18 Jefferson Road and feel that they might be the neighbors who are most impacted by the proposed construction. She said that the house is significantly larger than what was there. She said that their biggest concern is that the building is being shifted on the lot. She said that what was a significant distance of 29 feet 10 inches from the rear lot line will now be 21 feet, which is a lot closer to the rear lot line. She said that it is a very steep hill. She said that by moving it further back, it will loom much larger over Oakland Street.

Mr. Levy said that the plan that was submitted to the Board shows that the previous structure was 22.8 feet at the closest to the rear property line. Mr. Wasilauskas said that was the garage. Mr. Levy said that there was a 7.2 foot jog towards Jefferson Street. He said that it appears to be more than 30 feet. He said that the new structure appears to be 21 feet but it does not jog. Mr. Wasilauskas said that it will be closer and 32 percent larger. He said that the roofed area will increase from 1,424 square feet to 1,878 square feet. He said that the project is significantly bigger as well as closer to the Oakland Street side of the lot. Mr. Levy said that the house is constrained by the front setback. He said that it appears that it could be shifted two feet forward.

Ms. Wasilauskas said that the plans do not show a porch or deck. She asked how they will be able to use the back without putting something in there because it is so steep. She said that there are doors coming out of the basement level. Mr. Diamond said that those doors are for second egress and for more light. He said that they did not want retaining wall. He said that a backfill might disturb root systems. He said that the goal was to somewhat mimic the structure that was there and not touch the rear.

Mr. Levy said that it would have been helpful if the Petitioner had spoken with the neighbors before the hearing.

Mr. Levy said that it is a much larger house with larger massing. He said that the grade is significant with a 12 to 13 foot grade change.

Mr. Wasilauskas asked about TLAG calculations. Mr. Levy said that the calculations are based on district.

Mr. Wasilauskas discussed concerns about the proposed storm drain. He said that there are some significantly sized trees in the area that it will go in. He said that they are concerned about the roots being disrupted. Mr. Levy said that the Tree Preservation Bylaw regulates trees within a certain setback area. He said that nothing that the Board does tonight will alter the Petitioner's obligations under the Tree Preservation Bylaw. He said that the bylaw does not prohibit the removal of trees. He said that it appears that there are a number of trees on the plan that will be jurisdictional under the bylaw. Ms. Wasilauskas asked if it would be possible for the builder to mark where the filtration will be located. Mr. Levy said that the infiltration system will be located at the rear right of the property, as shown on Plan 2 of 5. Mr. Adams said that the plan does not show that the system will interfere with the adjacent trees. Ms. Wasilauskas asked if the trees shown on the plan are existing. Mr. Himmelberger confirmed that the existing trees are shown on the plan.

Ms. Wasilauskas said that any outdoor lighting at the back will shine into her and Ms. Ellis' houses. Mr. Levy said that the Board will consider imposing a condition for that.

Katherine and Kevin McDonald, said that they are the direct abutters at 22 Jefferson Road. Ms. Macdonald said that she hopes that this is not precedent setting that someone can take down a house and ask for forgiveness later. She said that sets a really bad standard for how the town deals with properties. Mr. Levy said that the Petitioner got a demolition permit to demolish the house. He said that the Board discussed legal technicalities earlier but will not be granting forgiveness for any transgressions. He said that the Petitioner asked for and received a permit and then tore down the house. He said that the question is what the legal effect of that is. He said that he assumed that the Petitioner did not do anything intentionally. He said that if they had realized that they were going to get into this quagmire, they probably would have waited to demolish after they had applied for a special permit. Mr. Himmelberger said that he was retained by his client after the Building Department told him that he needed a special permit.

Ms. McDonald said that there were two mature trees at the front of the house. She asked if there was permit to remove them. Mr. Levy said that is not before the Board. Mr. Himmelberger said that the trees were removed pursuant to the tree plan that was submitted.

Mr. McDonald said that the lot slopes from front to back and from one side to the other. He said that the intention is to move the driveway to the other side of the property. He said that the side that it will be moved to is next to their house where there is a screen of mature trees that the McDonalds own. He said that he would like to be assured that excavation related to moving the driveway, leveling the lot to build a house one, and other thing will not disrupt the root structure of trees that have been there for at least 75 years. Mr. Adams confirmed that Mr. McDonald is concerned about damage to trees that are on his property. Mr. Levy said that the new house will be four feet closer to the lot line but well within the setback. Mr. Redgate said that it would be a good idea to have more protection in the area of erosion control that is shown on Sheet 5 of 5 to keep equipment out of the tree area. Mr. Diamond said that throughout the project they will have a fence that establishes what the tree lawn is. He said that under their plans from a certified arborist, they have specific protection plans. He said that during the excavation phase, if there is any concern about root structure on this or abutting properties, an arborist will be on site so that, if there is any impact, they will clean cut the root system to ensure longevity of the tree and will establish a fertilization and protection plan. He said that they understand that it is important to protect the roots for trees on this and abutting properties.

Mr. Adams said that the fact that the house came down is the biggest issue for him. He said that this is not a typical proposal. Mr. Levy said that massing is an issue. He said that it is a unique lot due to the topography. He said that it looks like the house was pulled as far forward as possible. Mr. Himmelberger said that they submitted a 500 Foot Rule letter and based upon that, there is a house with 500 feet with a front yard setback of 27.9 feet. He said that his client would be entitled to use the standard 30 foot setback and is willing to move the house forward two feet. He said that they can submit a revised plan showing that shift. He said that there is some code required lighting at the rear of the house at the egresses. He said that his client will restrict that lighting to what is required by code and have it be dark sky compliant. Mr. Levy said that the Building Code requires a light at every exterior door. He said that the Board can impose a condition to require that lighting be downlight that does not spread to neighboring properties.

Mr. Adams asked about the use of the stair at the back. He said that it becomes almost like a deck on what appears to be the second floor on the back of the house. Mr. Diamond said that it should not be there. He said that it would make more sense to have a small deck off of the kitchen or family room. He said that by positioning the house the way that they did, the goal was to create yard space in the front. Mr. Adams said that having a small deck is preferable to him than a stair going down. Mr. Himmelberger asked if an 8 foot by 4 foot deck would be acceptable. Mr. Diamond said that they can remove that detail so that they are not encroaching further back. He said that they will have a window instead of a door there and work to create any outdoor space toward the front of the property. He said that would limit any impact of lighting to the abutters to the rear.

Mr. Levy asked about the proposed ridge height. Mr. Himmelberger said that average grade is 31 feet 8 inches, as opposed to currently 31.18 feet. Mr. Levy said that in looking at the plans, it appears to be a much taller house.

Mr. Levy discussed the Board's authority to grant a permit and if the Board is inclined to grant a permit, what conditions it would place on it. He said that he was still somewhat skeptical under a Section 6 finding, the house that was demolished prior to the filing for a permit can be used as a basis for a special permit. He said that he would be more inclined to entertain whether there was a zoning freeze on the lot based upon Zoning at the time that it was created and whether there was any common ownership of abutting lots. Mr. Himmelberger said that the house was built in 1938. Mr. Levy asked if there is any deed or reference. Himmelberger said that he did not. He said that the lot was probably created in the 1930's.

Mr. Adams said that he was troubled by the notion that you need a special permit to tear down a house. He said that, had the Applicant known, he could have easily addressed that by not tearing down the house. He discussed granting a special permit based on the nonconformities that Mr. Levy discussed. Mr. Levy said that the Board could consider the lot rather than the structure being grandfathered. He said that the Board would not have to get to the issue of timing and the appearance of precedence.

The Executive Secretary said that the 10, 15 and 20,000 square foot districts became effective on March 12, 1940. Mr. Levy said that the issue remains whether the lot was held in common ownership. Mr. Himmelberger asked if the Board could grant a special permit subject to a condition that confirmation be submitted that shows that, at the time the house was built, it was not in common ownership with the abutting lot. Mr. Levy questioned whether the issue is when the lot was created or when the house was built on it. He said that Zoning Freeze is effective for date of filing the plan subdividing the lot, not building the house on the lot. He said that the question is whether the then owner owned the abutting properties. Mr. Himmelberger said that you can have a plan that every property in the Standish Estates was owned by one person. He said that he believes that the timeline for Zoning Freezes is measured once the house is up, once the lot is independent. He said that once the zoning changes, as it did in 1940, that is when you have the scrutiny to whether it is under common ownership or not.

Mr. Levy said that going forward, the best thing is for the Board to have all the information available to them. He said that the Board will need to know when the lot was subdivided and if there was any common ownership from the time it was created to the time when a building permit for the house was pulled.

Mr. Levy said that he drove by the property. He said that the houses on Jefferson Road do loom over the houses on Oakland Street due to the topography. He said that pulling it forward a couple of feet, eliminating the stair, and lighting restrictions will go a long way. Mr. Adams said that there is a plan to deal with the runoff. He said that it probably will not be a problem with an engineered system.

Mr. Adams moved, Mr. Redgate seconded the motion, and the Board voted unanimously to continue the petition to March 5, 2020.

#### ZBA 2020-08, STEPHEN & LARA BRUNO, 19 FRANCIS ROAD

Present at the public hearing were Laura Bruno, the Petitioner, and Michael Hally, Architect.

Ms. Bruno said that she lives at 19 Francis Road with her husband and daughter. She said that she and her husband moved to the house four years ago from Beacon Hill. She said that they looked for quite some time for a place where she could walk to the train and town center and also have a large back yard. She said that they knew that the house was too small but it was larger than what they had on Beacon Hill. She said that they welcomed a daughter in 2018 and a second one is on the way. She said that Mr. Hally designed something that will allow them to stay in their home and has an old New England charm that fits into the neighborhood. She said that the neighbors have been very supportive of them since they moved to town. She said that the abutters have no objections to the plans. She said that the request is for a special permit to build an addition on a nonconforming structure.

Mr. Levy confirmed that the only nonconformity is the right side yard setback at 19.5 feet.

Mr. Hally said that there will be no change to the footprint of the house other than a covered porch at the front at the corner of the L. He said that the 6 foot by 8 foot porch will allow for a bigger footprint on the second floor. He said that the plan is to build bedrooms on the second floor and a third floor playroom. He said that by putting the playroom on the third floor, they can preserve the back yard space. He said that the style will be Dutch colonial. He said that there will be a gable facing the street. He said that they have the roof line coming down as low as possible. He said that the partial third floor will go left to right, with a dormer at the front to get morning light and a dormer at the back get the stairway to the third floor. He said that there are a lot of Dutch colonials in the neighborhood.

Mr. Levy asked if a TLAG Affidavit had been prepared. Mr. Hally said that TLAG will be under 3,600 square feet. Mr. Levy discussed adding a condition that requires that the TLAG be under 3,600 square feet.

Mr. Levy said that the Board received a letter from the DPW stating that the stone patio is in public right of way. Ms. Bruno said that there was a misunderstanding. She said that there was an existing cobblestone walkway when they purchased the house. She said that they were in the process of removing the cobblestone and had it stacked in order to be taken away. She said that a DPW worker saw it and thought that it was being installed and replacing the asphalt curb with cobblestone. She said that she called the Town Engineer and explained that they were removing the cobblestones and the only remaining stone is the one that goes up to the stairs. Mr. Levy asked if the area on the plan that is labeled stone patio has been removed. Ms. Bruno said that it used to be all cobblestones and they were taken up because they were not attractive. Mr. Hally said that the site plan shows it in entirety of what it used to be. Ms. Bruno said that the plot plan was done before the cobblestones were taken up. Mr. Levy discussed the Board's jurisdiction over the right of way.

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. Levy asked if the Petitioner had spoken with the neighbors about the plans. Ms. Bruno said that they reviewed the plans with all of the neighbors and she has emails from them, which she submitted for the record. Mr. Levy said that only one of the abutter comments identifies where the people live. Mr. Redgate asked about the abutter to the right. Ms. Bruno said that is Kathy and Marie.

Mr. Adams asked about the height of the peak in the attic. He said that it is right at the edge of 35 feet and the only place that they could take that out would be by dropping the ridge, which would affect the whole design of the house style. Mr. Hally discussed the conservative ceiling heights.

Mr. Levy said that the proposed structure will have bigger massing and height. He said that a larger project was approved further down the street. He said that

Mr. Redgate moved, Mr. Adams seconded the motion, and the Board voted unanimously to approve a special permit, finding that it will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

#### ZBA 2020-09, KEVIN McCLINTOCK FAMILY TRUST, 97 CREST ROAD

Present at the public hearing were David Himmelberger, Esq., and Kent Duckham, Architect, representing the Kevin McClintock Family Trust, the Petitioner.

Mr. Himmelberger said that the request is to construct a two story addition at the rear of a pre-existing nonconforming home. He said that the existing front yard is 23.5 feet, and the existing side yard is 15.3 feet. He said that there is a pre-existing nonconforming one car garage with less than required front and side yard setbacks. He said that the proposed project will involve razing and removal of the garage. He said that the proposed addition will be fully compliant except for the basement, side facing two car garage with a side yard setback of 24 feet where 30 feet is required. He said that the house is on an unusually shaped lot with a significant topographical slope of 20 feet from front to back. He said that, pursuant to two of the three prongs for the granting of a variance, that a variance is warranted for the basement garage.

Mr. Himmelberger said that the proposed new addition will maintain the existing ridge height of 23.5 feet. He said that total TLAG will be 3,436 square feet, which is below the threshold of 3,600 square feet for this district in which it is located. Mr. Levy asked if a TLAG Affidavit was done. Mr. Himmelberger said that TLAG is shown on Plan A011 and a worksheet was provided.

Mr. Himmelberger said that lot coverage will increase from 1,879 square feet to 1,984 square feet, for a modest increase from 16 percent to 16.7 percent. He said that construction of an addition that will be fully compliant except for a side facing garage warrants the requested relief. He said that the neighbors were consulted. He said that the neighbors at 95 Crest Road were very supportive. He said that the neighbors to the south had a number of concerns that they raised with the Petitioner including more screening on both sides. He said that Plan A01 shows a driveway to garage with a small wall that bends around. He said that there was a request to put arbor vitae on either side of the wall. He said that there was a request to move a proposed fence off of the wall and to move the wall over a foot from the property line to lessen the effect on the neighbor's trees. He said that his client agreed to move the wall a foot inward, agreed to install 12 arbor vitae, six and six on either side, and plant three red maples for additional screening. He said that his client believes that it would look unusual to not have the fence centered on top of the wall. He said that that is only requested change that the Petitioner did not make. He said that the changes are not reflected on the plan because negotiations have been ongoing.

Mr. Himmelberger said that there is a proposed drywell that is currently shown in the driveway on Plan A001 to capture any additional runoff. He said that because there hasn't been a perk test yet, the drywell might move into the rear yard. He said that Page 2 of the revised plans shows a proposed wall with a one foot offset and impervious area increasing from 2,830 square feet to 3,950 square to capture runoff for underground infiltration.

Mr. Himmelberger said that Page 3 of the revised plans is the Existing Conditions Plans that shows the topographical challenges of the lot from front to back and the pie shape.

Mr. Himmelberger said that a Tree Mitigation Plan will be submitted for the project that shows compliance with the bylaw.

Mr. Levy said that there are two requests for relief, one is for a special permit under Section 6, and the other is for a variance. Mr. Himmelberger said that it is a special permit in that they will add onto a pre-existing nonconforming home. He said that it is a variance for the new nonconformity of a side facing garage. He said that it will line up with the driveway on the neighbor's property.

Mr. Himmelberger said that this is an older home that they wanted to preserve. He said that it will retain its charm from the street. He said that you will not see the addition at the back from the front. He said that the house currently has a number of bump outs at the rear, some of which will be removed.

Mr. Levy confirmed that none of the retaining walls are jurisdictional under the Zoning Bylaw. He asked if the garage could be pulled closer to the lot line to help mitigate the nonconformity. He confirmed that it will be a two car garage. Mr. Duckham said that the garage will be 22 feet by 22 feet, which is smaller than typical. Mr. Redgate questioned the ability to back out of the second bay and maneuvering without the 30 feet. Mr. Himmelberger said that there is a wall there so there will not be trespass on the neighbor's property. Mr. Levy asked about exiting the garage without backing down the driveway. He asked if there will be an area to turn around. Mr. Duckham said that two maneuvers may be required to get out.

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

Stanley Brooks, Esq., said that he was representing Janet Long and Shing Tao Shu, who are the owners of 111 Crest Road, which is next door, downhill below the retaining wall. He said that they would like the Board to know that they are supportive of this project. He asked that the revised plans be the plans of record. He said that they wanted to encourage the Board to grant a variance.

Mr. Brooks said that 97 Crest Road slopes significantly from front to back and right to left, with the left being the common lot line with 111 Crest Road. He said that there is a slope that continues down from the common lot line, approximately eight to nine feet. He said that drainage is a very serious concern. He said that his clients purchased the property last November, so they have not a chance to live through a seasonal year to see what the existing impact of water is. He said that they aware that a soil test has not been completed and that there will be a drywell somewhere. He said that a drywell is not shown on the plan. He said that the plan shows a drain in the driveway at Elevation 198. He said that the new plan shows downspouts and roof runoff be collected and directed to a drywell that has an unspecified location. He said that they did not see any information about the increase in impervious surface but on the Town's GIS maps, it appears that there will be in excess of 2,000 square feet of impervious surface added. He said that there will be a lot of new driveway, two parking spaces at the front, new walls all around, and a patio/fire pit at the back. Mr. Himmelberger said that the impervious surface is shown on the plan as increase of 1,120 square feet. He said that a lot of old roof will be coming off.

Mr. Duckham said that they are required to have a drain in the driveway because the garage is below street level. He said that downspouts will collect to underground drainage to a drywell. He said that it will wrap

around both sides of the building. Mr. Brooks said that there is no design that they are aware of. He said that they do not know what the system will be designed to accommodate. Mr. Redgate asked if there are any existing drainage issues at 111 Crest Road. Mr. Brooks said that his clients have only lived there since November and the ground has been frozen.

Mr. Brooks said that another concern is that three to four feet of fill will be placed in driveway area and re-graded to the west and south toward 111 Crest Road. He said that they do not know what the layout will be. He said that it looks like the asphalt will go up to the wall and they do not know if water will be collected there. He said that they do not know what the composition of the retaining wall will be and would like to know so that they can feel comfortable that there will not be a drainage issue. He said that the existing retaining wall is two to three feet tall. He said that the plan is to fill three to four feet and put up a new retaining wall, a little less than 48 inches. He asked if the existing retaining wall will be removed. Mr. Duckham said that the wall will be removed. He said that they do not think that it is stable. Mr. Brooks said that he assumed that the grades shown on the civil plan take into account the retaining wall. He said that they will be adding two to three feet of fill and removing the existing retaining wall. He asked what the height of the new wall will be. Mr. Duckham said that the new wall will not exceed four feet.

Mr. Levy suggested that the Petitioner's representatives speak with Mr. Brooks and his clients to try to answer questions and resolve issues while the Board moves on with agenda.

The hearing for 97 Crest Road was adjourned temporarily at 9:40 pm.

#### ZBA 2020-10, JOOST SPITS, 8 TENNYSON ROAD

Present at the public hearing was Joost Spits, the Petitioner, Eyal Leib, Land Design Build, and Ivan Hernandez, I.S. Hernandez Design Services.

Mr. Hernandez said that the proposal is to extend the two car garage at the rear of the house by 10 feet at the basement level and build a deck above the garage. He said that they will remove the pergola. He said that the existing first floor has no connection to the back yard. He said that there is a small tight porch off of the existing family room that has no connection to the lower yard area. He said that it is a long way to access the beautiful back yard.

Mr. Levy asked what the existing nonconformities are. Mr. Hernandez said that right side yard setback is the only nonconformity. Mr. Levy said that the TLAG Affidavit shows that it is under the threshold for a 15,000 square foot district. He said that at 14,021 square feet, it is an undersized lot.

Mr. Redgate confirmed that the garage will be expanded to accommodate the deck above. Mr. Hernandez said that the paved area will be reduced.

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

Mr. Levy read the Planning Board recommendation.

Mr. Redgate moved, Mr. Adams seconded the motion, and the Board voted unanimously to approve 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.

#### ZBA 2020-11, SOUTH WATER SIGNS, 276 WASHINGTON STREET

Present at the public hearing was Michael Ditullio, owner of Loyal Companion, representing South Water Signs, the Petitioner. He said that the request is for a special permit for the sign. He said that after a sign

had been approved by the Design Review Board (DRB) in November 4, 2019, the sign company made the sign and put it up. He said that Michael Grant, Building Inspector, did a site review and said that the sign was too big. He said that the sign was taken down. He said that the L in Loyal Companion is high because of the logo. He said that it is not a channel set but more of a logo sign. He said that the sign will not be invasive to the building and is smaller than the For Lease sign. He said that the proposed sign will be attractive.

Mr. Levy asked about the requested relief. Mr. Ditullio said that the proposed letter size is nonconforming at greater than 14 inches. He said that the L will be 1 foot 11 inches, or approximately 24 inches. Mr. Adams said that all letters in Loyal except for the O will be larger than 14 inches. He said that the Companion letters will be smaller. He asked if the sign was designed before looking at the sign bylaw. Mr. Ditullio said that they thought that the sign was conforming. He said that DRB approved the sign but Mr. Grant said that it was bigger than allowed by right.

Mr. Levy said that DRB approved the sign with two changes. He asked if those changes are reflected in the plans that were submitted to the Zoning Board. He said that the Board did not see the options.

Mr. Redgate said that it is appropriate and a good looking sign.

Mr. Levy asked about the nature of the business. Mr. Ditullio said that it is pet supplies and services such as day care, training and self-serve grooming. He said that he has been operating in Massachusetts for 32 years. He said that Loyal Companion is a rebranding of Especially for Pets.

Mr. Adams said that the sign looks awkward with the white background in the triangle. He said that a neutral background would look better. Mr. Ditullio said that they were told that it needed to blend with the white. He said that the sign was originally blue with white letters. Mr. Adams said that the mockup shows the background as gray and the sign as bright white.

Mr. Levy read the Planning Board recommendation. He said that it incorporates the DRB recommendation. He discussed adding that as a condition.

Mr. Redgate confirmed that the sign is already made. Mr. Ditullio said that they can paint the sign to match the color of the building.

Mr. Ditullio said that the sign will be illuminated externally by gooseneck lighting.

Mr. Adams asked what the side entrance is used for. Mr. Ditullio said that it is a second egress and access to a training room. He said that there is an entrance at the back for loading. He said that they cannot use the basement because of handicapped issues.

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

John Hedges, 16 Eaton Court, said that he is an abutter who has lived there for the past 25 years. He said that the prior tenant, Whole Foods, was not a good neighbor. He said that delivery trucks will come all night in front of his bedroom windows and use their backup alarms. He said that he hopes that it does not happen again.

Mr. Ditullio said that they have been operating for several months. He asked if Mr. Hedges had any issues. Mr. Hedges said that so far there have been no issues with nighttime deliveries.

Mr. Levy said that the matter before the Board is for a sign.

Mr. Ditullio said that this is a convenient location. He said that they locate in neighborhoods so that customers have the convenience. He said that they want to be good neighbors. He said that they have been getting deliveries for several months now.

Mr. Hedges said that he was interested to see the design of the sign. Mr. Levy said that the sign has been reviewed by the DRB, the Planning Board, and now the ZBA.

Mr. Adams said that he did not personally like the sign and thought it is a little big. He said that he was happy for the business and understands that it would be a hardship to completely redo the sign.

Mr. Levy said that conditions would include a requirement that the background panel of the wall sign match the color of the storefront, and lighting will be limited to business hours.

Mr. Adams read the required findings in Section 22A of the Zoning Bylaw.

Mr. Levy moved, Mr. Redgate seconded the motion, and the Board voted unanimously to approve a special permit, subject to the conditions that the background panel of the wall sign match the color of the storefront, and lighting will be limited to business hours. The Board made findings in accordance with Section 22A of the Zoning Bylaw.

Mr. Ditullio submitted a plan with dimensions of the sign.

#### ZBA 2020-09, KEVIN McCLINTOCK FAMILY TRUST, 97 CREST ROAD

The hearing was reopened at 10:12 pm.

Mr. Brooks said that it was agreed that there will be a condition whereby the maximum height of retaining walls along the lot line with 111 Crest Road will not exceed a combined 48 inches. Mr. Levy said that four feet would be noncompliant. He said that they would have to apply for a special permit for a 48 inch high wall. Mr. Brooks said that there is a question concerning the existing retaining wall and any additional retaining wall. He said that the combined total of those walls will be less than 48 inches. Mr. Himmelberger asked if there is an implicit or explicit condition that the Petitioner can come back for a special permit for a wall that is 48 inches or more.

Mr. Brooks said that another condition is that the owner will comply with the tree preservation bylaw with respect to trees on 111 Crest Road that would be impacted by redevelopment. He said that the owners of 97 Crest Road are only required to deal with trees on their land under the bylaw.

Mr. Brooks said that a detail sheet on the wall and an elevation on Sheet A100 that shows what the wall will look like will be provided and his clients reserve the right to sign off on it. Mr. Levy said that it would be difficult for the Board to condition its decision on Mr. Brooks' clients' approval. He said that the Building Inspector has to look at the conditions. Mr. Brooks said that they will take the Petitioner's word about the agreement.

Mr. Himmelberger said that an elevation and wall drawing will be submitted to the abutter within one week. He said that if it is not to their satisfaction, they will have appellant right to dispute it. Mr. Levy said that there will be nothing in the permit regarding the cut sheet.

Mr. Brooks said that lighting on the 111 Crest Road side of the property, on the southerly side of 97 Crest Road, will be dark sky compliant.

Mr. Brooks said that nobody knows what the drainage design will be. Mr. Brooks said that the system should be sufficient to capture all surface and roof runoff. Mr. Levy said that the Board will require that a drainage plan stamped by an engineer be submitted. Mr. Adams said that there is recourse if the drainage plan does not keep the water on the property. Mr. Brooks said that his clients do not want to get in to a civil matter. Mr. Levy said that drainage shall be designed so that there is no runoff onto the abutter's property. Mr. Redgate said that there should be no increase in the volume or the rate of runoff. Mr. Brooks said that they do not know what the existing volume and rate is. Mr. Redgate said that an engineer can make that calculation. Mr. Levy said that the Applicant shall submit a stamped report from a civil engineer with pre and post drainage calculations that show that peak rate and volume are not increased.

Mr. Adams said that the plans that were submitted should be stamped by a professional.

Mr. Levy said that a condition will be that the trees shall be as shown on Plan A001. Mr. Brooks said that the trees are also shown on the proposed addition plan stamped by Bruce Bradford, PLS, Everett Brooks Surveyors. Mr. Levy said that the condition will be that the trees depicted on the Plan of Land in Wellesley MA, dated February 5, 2020, revised February 6, 2020, stamped by Bruce Bradford, Professional Land Surveyor, shall be installed prior to a Certificate of Occupancy. Mr. Himmelberger said that the caliper of the proposed trees is shown on the plan that is stamped by Mr. Bradford.

Mr. Levy read the Planning Board recommendation.

Mr. Adams moved, Mr. Redgate seconded the motion, and the Board voted unanimously to find that the proposed alterations shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure and approve a special permit subject to conditions the conditions that the Applicant shall submit a stamped report from a civil engineer with pre and post drainage calculations that show that peak rate and volume are not increased, and the trees depicted on the Plan of Land in Wellesley MA, dated February 5, 2020, revised February 6, 2020, stamped by Bruce Bradford, Professional Land Surveyor, shall be installed prior to a Certificate of Occupancy.

Mr. Adams moved, Mr. Redgate seconded the motion, and the Board voted unanimously to approve a variance, making findings in accordance with Section 24D of the Zoning Bylaw and finding that the hardship is owing to conditions due to the shape and the topography of the lot.

As there was no further business to come before the Board, the hearing was adjourned at 10:27 pm.

Respectfully submitted,

Lenore R. Mahoney  
Executive Secretary