

**ZONING BOARD OF APPEALS**

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

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DEREK B. REDGATE

May 2, 2019
7:30 pm
Juliani Meeting Room
Town Hall

Zoning Board of Appeals Members Present:

Richard L. Seegel
David G. Sheffield
Derek B. Redgate

PUBLIC MEETING

ZBA 2017-34, BABSON COLLEGE, WEBSTER ATHLETIC CENTER
ZBA 2018-34, BABSON COLLEGE, HORN LIBRARY

Present on behalf of Babson College was David Grissino, Director of Capital Projects & Planning, who said that he was present to talk about two projects and what the College believes are minor modifications to the previously approved documents.

Mr. Grissino said that the first project involves the Webster Athletic Center, which has been expanded. He said that during the course of construction, two things happened on the site, mostly during utility infrastructure when National Grid came out to install new gas lines. He said that there were compromised tree areas in two locations, one along the west side of the building that was previously identified as a tree protection area in the original submission and another location where there is a single large oak tree at the corner of Babson College Drive and Bryant Way. He said that both of those locations were compromised by the utility work, as shown on Drawing L5.1. He said that those trees were removed. He said that some of the trees were in poor health.

Mr. Grissino said that they have done a one to one tree replacement in those areas and in many ways it will be an improvement because the trees will now be laid out in relationship to the design of the building. He said that at the corner where there was one large tree, they added a couple of new trees to replace the single large tree that was taken down.

Mr. Grissino said that in the upper left hand corner of the drawing, which is near the upper entrance to the Webster Center, there is a large generator which they had planned to screen. He said that they changed the planting to be more robust with many more plantings that are lower to screen the equipment more effectively.

Mr. Grissino said that the proposed change at the Library, as shown on L002, concerns a pathway from the main college drive between the new addition and an existing building, Babson Hall. He said that they had a walkway and a ramp to provide an accessible route. He said that instead of having a ramp and a separate stair, the plan was revised to be a single ramp, which is a more simple design and enabled them to enhance the area with more plantings. He said that it will be a more effective geometry for the users.

Mr. Grissino said that they added 17 additional trees in front of the Library and at the small courtyard at the rear.

Mr. Grissino said that Babson is also requesting to extend the planting season for both projects. He said that they would like to extend the time to install all of the plant materials. He said that recent weather conditions have made it hard to prepare the site at the Library. He said that the request is to extend the time to plant. He said that they requested that the time be extended to August 31, 2019, at which time all of the projects on campus will be complete. He said that they fully expect to have the landscaping installed by then.

Mr. Sheffield said that the proposed changes are good improvements.

Mr. Seegel said that the Board is being asked to make a determination that the proposed changes are minor modifications that do not require a public hearing.

Mr. Redgate moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to find that the proposed changes to approved plans for the Webster Athletic Center, in relation to ZBA 2017-34, are minor modifications that do not require a public hearing.

Mr. Redgate moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to find that the proposed changes to the approved plans at the Horn Library, in relation to ZBA 2018-13, are minor modifications that do not require a public hearing.

Mr. Seegel moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to extend the landscaping period to August 31, 2019 for ZBA 2017-34 and ZBA 2018-13.

ZBA 2019-27, MATT COMELLA, 288 WASHINGTON STREET

Mr. Seegel said that the petition has been withdrawn.

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

Present on behalf of the Town were Thomas Harrington, Esq., Town Counsel, and Michael Grant, Building Inspector.

Present at the public hearing were David Himmelberger, Esq., representing Brightside Investments LLC, and Sam Soderholm, Soderholm Custom Builders, Inc. Mr. Himmelberger said that Dana and Joanna Thorpe live at 11 Longmeadow Road with their two children and are also present at the hearing.

Mr. Himmelberger said that the Appellants are seeking an appeal of a denial of a request for Zoning interpretation. He said that there are two appeals that were taken serially.

Mr. Himmelberger said that 11 Longmeadow Road pre-existing nonconforming due to lot size, which is approximately 20,000 square feet in a Single Residence district in which the minimum lot size is 40,000 square feet. He said that his clients would like to build a larger home at 7 Longmeadow Road and have a portion of it built into what would now be the setback with 11 Longmeadow Road. He said that his clients intended to take 11 Longmeadow Road down after 7 Longmeadow was built, but after conversation with the Building Inspector, that was not received with approval. He said that they submitted a formal request for Zoning interpretation. He said that the purpose of the request was that they wanted to submit a building permit application for a new home at 7 Longmeadow Road, with the understanding and commitment that prior to receiving a Certificate of Occupancy (CO) for 7 Longmeadow Road, 11 Longmeadow would have to be razed. He said that on January 7, 2019, the Building Inspector denied the request, citing as the basis for his denial, Section 23A, which precludes the issuance of a building permit if the constructed building would be in violation of the Zoning Bylaws. He said that it was the Building Inspector's opinion that would occur if he issued a building permit for the construction at 7 Longmeadow Road, as in his opinion this would result in two dwellings existing on the single merged lots, where two lot merged for Zoning purposes the kitchen was taken out during construction of 7 Longmeadow Road. He said that they appealed the determination predicated on the fact that, as the Building Inspector is the sole individual responsible for the issuance of CO's, no CO could be issued for 7 Longmeadow Road until 11 Longmeadow Road had been taken down. He said that while there would be two physical structures on the lot for a brief time, there never, as defined in the bylaws, be more than one one-family dwelling at a time.

Mr. Himmelberger said that when his clients received the determination on their initial request, they tried to be mindful of the Building Inspector's rationale, so they submitted a second request for Zoning interpretation in which his client would construct 7 Longmeadow Road in phased construction. He said that the first phase would be the submittal of a building permit application for the construction the building with no kitchen facilities. He said that the existence of a kitchen is what controls whether or not a building is a dwelling. He said that by phasing the construction, at the completion of Phase 1, the Applicant would have a large accessory structure that in no way qualifies as a dwelling and could never be converted. He said that the bylaw says that it is not a dwelling. He said that once Phase 1 was completed, 11 Longmeadow Road would come down and the Applicant would apply for a building permit for Phase 2 to include a kitchen. He said that it is the kitchenless phase during Phase 1 can be construed as a garage or an accessory structure, which as an accessory use is allowed under the bylaw. He said that an accessory use is defined as customary in connection with a one-family dwelling, incidental thereto including a private garage or private stable. Other examples of accessory uses include barns, pool houses, art studios and the like. He said that it is also the case that the use must be customary. He said that there is nothing within the definition that speaks to the size of the structure. He said that only one single family dwelling is permitted per lot in the Single Residence District. He said that the Zoning Bylaw defines a one family dwelling as a detached dwelling containing not more than one dwelling unit, that is a unit with facilities for food storage and preparation. He said that the kitchenless #7 is merely an oversized accessory structure containing a collection of rooms and garage bays. The size of the structure is immaterial so long as its use can be seen as customary in connection with a one family dwelling.

Mr. Himmelberger said that in 2015 the Land Court was called upon to determine if a renovated 165 foot tall, 10 story watch tower which had been constructed in 1943 as part of our war effort, could be considered an accessory structure to single family structure on which it sat. He said that the Land Court found that the uses of the renovated tower as guest quarters, storage of household items, home office, and household entertainment were accessory and customarily incidental to the permitted use of the existing dwelling, with the caveat that it held to the facts that they galley in the tower was not thereafter converted to a full kitchen. He said that the focus was on no kitchen being a determinant. He submitted an article and photographs and

the Land Court Decision for Lazarek, in which the Court held that the 2014 renovation did not create a dwelling unit, did not create an illegal second dwelling, and instead the uses post 2014 as guest quarters, storage of household items, home office, and household entertainment were accessory and customarily incidental to the permitted use of the building.

Mr. Himmelberger said that it is immaterial to the issue before the Building Inspector and this Board that following the construction of this large accessory structure that the Applicant will thereafter seek a subsequent Phase 2 building permit, following the razing of 11 Longmeadow Road. He said that the only issue to be decided is whether the requested building permit for Phase 1 would result in a Zoning violation as two dwellings on a lot. He said that it will not. He said that there is no basis in fact for the Building Inspector's assertion that to grant a Phase 1 building permit will result in a violation of the rule against two single family dwellings on a single lot, because it will not.

Mr. Seegel asked if the building permit is for full construction of a house. Mr. Himmelberger said that without a kitchen, it is not a dwelling. Mr. Seegel said that the building permit application will be for a second structure on a residential lot. Mr. Himmelberger said that it will not be a second dwelling, which is the prohibited situation. He said that the request is that the Board grant the first appeal which allows the issuance of the full building permit, including kitchen, because they cannot get a CO until 11 Longmeadow Road comes down. He said that until that happens, they still will not have a habitable dwelling because they would not have a CO for it. He said that if the Board grants that appeal, the second appeal would be moot. He said that if the Board is not inclined to grant the first appeal, his clients request that the appeal be granted to allow the Building Inspector to issue a building permit for phased construction of 7 Longmeadow Road, with the first phase being a kitchenless accessory structure and after that building permit is closed out and after 11 Longmeadow Road is razed, a second building permit will be submitted to build a kitchen.

Mr. Himmelberger said that all of the neighbors on Longmeadow Road have signed a letter of support. He said that there is no harm or insult to the Zoning Bylaws that result from granting this appeal. He said that there will be no permanent impact for the relief being sought. He said that at the end of construction, at the end of Phase 1 and thereafter the razing of 11 Longmeadow Road, and Phase 2 being the construction of the kitchen at 7 Longmeadow Road, there will be one single family dwelling on one lot and they will have eliminated the pre-existing nonconforming lot at 11 Longmeadow Road.

Mr. Seegel said that there is a remedy that is available, which is to rent another house, tear down 11 Longmeadow Road and proceed with construction at 7 Longmeadow Road.

Mr. Harrington said that Mr. Grant had consulted with him along the way with the various arguments presented by Mr. Himmelberger. He said that the property started out as two lots that have now merged into one lot. He said that they are looking to have two houses on a single lot. He said that just because you take a kitchen out of a house, it does not make it an accessory structure. He said that it does not qualify as something like a watch tower. He said that if this is allowed, it could become the norm in Wellesley, which is not what the Zoning Bylaw intended. He said that he did not think that it was a proper interpretation of the bylaw. He said that he has concerns about two dwellings on a single lot, perhaps with one without a kitchen, but at some point there could be tough decisions to make. He said that he did not think that the town would want to put itself in that situation.

Mr. Seegel said that he is concerned about the precedent that this would set.

Mr. Himmelberger said that in other situations where a lot was sufficiently large to permit a new structure to be built that is fully Zoning compliant, you could request the same relief. He said that the vast majority of lots in town do not allow for a new home to be built on an existing lot in a conforming fashion while the existing home remains. He said that the Bylaw has definitions for a reason and to say that just because the kitchen is not in it does not mean that it is not a dwelling. He said that a dwelling is specifically defined as a facility with the ability for food storage and preparation. He said that they do not have that here.

Mr. Seegel said that the request is a second building permit on the same lot. Mr. Himmelberger said that the Town approves them all of the time for barns, pool houses and cabanas. He said that there is no downside to the neighborhood or to the Town. He said that his client is willing to have as part of the condition that 11 Longmeadow Road must come down and is willing to put up a bond to take 11 Longmeadow Road down. He said that his client is willing to do whatever it takes to satisfy the Board that the Applicant would not change his mind at the end of the day and decide to keep both houses. He said that if there were two houses on the lot, both with kitchens, there would be a \$300 a day fine.

Mr. Seegel said that he would have to follow Town Counsel's advice.

Mr. Sheffield said that he has been finding Mr. Himmelberger's argument persuasive with a guarantee of no occupancy permit.

Mr. Redgate asked about a similar situation Livingston Road about four years ago. Mr. Himmelberger said that in that case the Applicant wanted to build over the property and go into the footprint of the existing home on the adjoining lot. He said that they were taking that down so that they could physically build it. He said that here there is no need to take it down to build the building. He said that the issue on Livingston Road was that, once merged, would the side yard setback need to be larger, and this Board found that it did not.

Mr. Himmelberger said that there is nothing in the bylaw that precludes the issuance of this building permit for something that is not a dwelling and can never be made a dwelling until 11 Longmeadow Road comes down. He said that clients will get the benefit of remaining on site overseeing construction with their children. He said that it is far less disruptive to them. He said that it will not be disruptive to the town and the neighborhood is squarely in favor of it. He said that there is no second dwelling that can exist under the scenarios that they have set forth. He requested that the Board grant the permit. He said that his client is happy to accept any conditions that the Board wishes to place within the issuance of the permit as to the fact that 11 Longmeadow Road must come down once 7 Longmeadow Road has been completed in Phase 1.

Mr. Seegel said that this will open a Pandora's box of future problems. Mr. Himmelberger said that there is no precedence. Mr. Seegel said that this will be setting a precedent if the Board grants what the Appellant is requesting. He said that he did not think that this is appropriate.

Mr. Harrington said that an accessory structure, by definition, need to be accessory to the main use. He asked how a house without a kitchen would be accessory to a house. Mr. Himmelberger said that it is a garage or a collection of rooms without a kitchen. He said that there is nothing in the bylaw that precludes it. He said that Mr. Harrington is twisting the bylaw to say that it is still a dwelling even though it does not have a kitchen. He said that the ability to set precedence is so small, given the fact that there are so few lots that could accommodate something like this. He asked where the downside is to the limited precedence where there is no violation to the bylaw. He said that they are talking about temporary quarters while a house is being built. He said that this is an existing structure in which his clients live and they want to continue to

live there while they build 7 Longmeadow Road. He said that by doing it in phased construction, they have been very careful to observe the requirements within the bylaw.

Mr. Redgate said that common sense is persuading him that Option 1 should be approved with a memo of understanding of the sequence of events that are going to happen. He said that the second option with no kitchen and waiting to have a second permit does not make sense to him.

Mr. Seegel asked about inserting a condition for a substantial bond of \$300,000 to \$400,000 so that it would be painful for them to not take the house down. Mr. Harrington said that creates difficult enforcement actions. He said that they will be constructing a second house with no kitchen. He said that is putting the burden on the Town to enforce. He said that is not how the Zoning Bylaw was written. He said that an accessory structure should be accessory to the main use, which is a dwelling unit. He asked how a full house without a kitchen would be accessory to the main structure. He said that it two uses on a single lot. He said that the Appellant bought two lots and could have lived on one and constructed on the other, but he merged them.

Mr. Himmelberger said that the entire kitchen would not be on the building permit application. He said that the first option is to build the house as a house with a stated condition and a bond put up that 11 Longmeadow Road is razed prior to any CO for 7 Longmeadow Road. He said that fully eliminates any concern about there being two houses at any point in time on the property.

Mr. Harrington said that Mr. Grant told him that there is no provision in the Zoning Bylaw for bonding a project such as this. He said that if there was an appeal, he was not sure that the Board could defend a bonding provision that does not exist. He said that if the process does not go well, the Town will pay to enforce the bond. Mr. Himmelberger said that this house will be going through Large House Review (LHR). He said that it can be a condition of any decision here that in the LHR there be a condition that bonding be obtained to guarantee the removal of the house. He said that this Board can condition remedies as it sees fit. He said that his client is willing to execute any binding contracts, the equivalent of an agreement for judgment. He said that there is no rationale for his client to want to switch horses at the end of the road and decide to keep both houses.

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

Kent Soderholm said that he and his son Sam are local builders who have worked in Wellesley for a long time. He said that they have gone through LHR with a couple of houses and were finished with the construction in January but were not able to finish all of the landscaping because it was winter. He said that the Planning Board approved their posting a bond to guarantee that the planting would be finished in the spring. He said that it is a similar situation with the Thorpes, so that they can move in in January and not have to wait until June and continue to rent the place for five or six months just because they are waiting for a final. Mr. Seegel said that is the type of problem that the Town does not want to take on. Mr. Himmelberger said that bonds are to protect against unlikely scenarios. He asked under what circumstances his clients, without a CO for 7 Longmeadow Road would decline to take down 11 Longmeadow Road. He said that the added bond guaranteeing it, locks it up.

Mr. Himmelberger said that 11 Longmeadow Road has an existing home where his clients are seeking to continue living in while 7 Longmeadow Road is built. He said that this is something that will be over and done within a couple of years.

Mr. Redgate discussed conditions on the Appeal. Mr. Seegel said that he could not vote in favor of what the Appellant is asking for. Mr. Sheffield asked if the Building Inspector has the authority to revoke a CO. Mr. Grant said that he does have that authority. Mr. Seegel said that there is another remedy to rent a home. He said that they made the decision to merge the two lots.

Mr. Redgate moved, Mr. Sheffield seconded the motion, and the Board voted with two in favor of granting the appeal for Option 1 to allow the owner to remain in 11 Longmeadow Road during construction of 7 Longmeadow Road with conditions that would guarantee the sequence of events, as described at the public hearing, will happen, and one Board member voting to deny the appeal.

ZBA 2019-39, JENNIFER WOUND & ROBERT HASELHURST, 52 EMERSON ROAD

Present at the public hearing were Kent and Sam Soderholm, Soderholm Custom Builders, Inc., and Robert Haselhurst, the Petitioner.

Mr. Sam Soderholm said that the property has 14,480 square feet in a district where the minimum lot size is 15,000 square feet. He said that the existing home was renovated in 2003 with a garage, master bedroom and bath addition. He said that the proposed construction will meet the Zoning setbacks. He said that the goal is to bump out the back for an enlarged kitchen and space on the second floor for a bedroom and reorganize the back façade. He displayed the location of the proposed addition on an enlarged plot plan.

Mr. Redgate confirmed that the hatched play area is not a structure.

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

Mr. Seegel read the Planning Board recommendation.

Mr. Sheffield, Mr. Redgate seconded the motion, and the Board voted unanimously to approve a special permit for the proposed addition, as presented.

ZBA 2019-40, SAMUEL LEE, 300 LINDEN STREET

Present at the public hearing was Sam Lee, the Petitioner.

Mr. Lee said that it is a small house and he would like to build an addition to the house. Mr. Seegel asked where the addition will be going. Mr. Lee said that it will be on the side towards Wall Street. Mr. Seegel asked if there is a plot plan that shows that a 30 foot setback will be maintained. Mr. Sheffield said that the face of the proposed garage will only have a 12.6 foot front yard setback. Mr. Seegel said that it is nonconforming because it does not have a 30 foot front yard setback. He said that there will not be a lot of room for a car and they will possibly have to park across the public sidewalk. Mr. Lee said that they intend to park in the garage.

Mr. Seegel said that the Planning Board recommended that the petition be continued to allow time to make changes to the application by reducing the size and height of the garage wing, synchronizing the overhangs to be consistent in style, and adding windows to the rear elevation.

Mr. Seegel said that it may be necessary to reduce the size so that there is sufficient space in the driveway to park a vehicle without going onto the sidewalk.

Mr. Seegel confirmed that an architect had drawn the plans. He suggested that the petition be continued this and have the architect design it so that it is set further back from Linden Street and the sidewalk. He said that the Planning Board asked that windows be put on the rear. –

Mr. Sheffield said that the interior could be redesigned so that the windows at the rear make sense. He said that the garage addition would be approachable from Wall Street, except that if it came straight out it would be close to the corner. He said that Linden Street is highly traveled and backing out could be a dangerous situation. Mr. Redgate said that there is an existing curb cut on Linden Street. Mr. Sheffield said that there is probably a way to move the driveway further up Wall Street, closer to the side or rear property line, and have an apron so that there is more landscaped space in the corner. He said that he would strongly advise against having a car in a 12.6 space. Mr. Redgate said that there needs to be at least 20 feet. Mr. Sheffield suggested that the Applicant consider reorient the garage doors.

Mr. Seegel said that the Board received a letter from the neighbors at 2 Wall Street, which is right next door.

Mr. Seegel said that the Board should continue the petition for two months. He said that the Applicant will have to develop a plan for contractor parking and how materials delivery will happen. He said that there is no construction parking allowed on Linden or Wall Streets. He said that all vehicles will have to be parked on the 300 Linden Street property.

Mr. Redgate said that he would like to see a more defined calculation of lot overage. He said that he was not convinced from the plans that the shed and porch accounted for and what the percentage would be. He said that he would like to have a separate calculation. Mr. Lee said that the shed will be removed. Mr. Redgate said that should be labeled on the plan.

Mr. Sheffield said that there are a series of design options. He said that option is to push the addition back from Linden Street. Mr. Seegel said that the side yard setback at the rear is already nonconforming, so a special permit would be approved to alter it.

Mr. Sheffield said that the roof line of the addition should not exceed the roof line of the existing house. He said that it tends to dominate the existing house.

Mr. Sheffield said that the eyebrow over the garage doors looked a little silly and should come out. He said that it did not cover anything.

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

ZBA 2019-41, JONATHAN & AMY TANG EDWARDS, 24 COLBY ROAD

Present at the public hearing was Jonathan Edwards, the Petitioner, who said that he lives at 24 Colby Road with his wife and 14 month old daughter. He said that they have lived there for almost six years, love the home and the neighborhood. He said that the house is an existing is two story cape on a 10,000 square foot lot that was built by variance for side yard setbacks. He said that the request is to create a two story addition that will meet the growing needs of their family. He said that the addition will retain the existing side yard setback. He said that they will build straight back. He said that there will be no changes to the front of the

house. He said that the addition will give them more square footage for a larger kitchen, a larger family space, and the opportunity to build an additional bedroom upstairs with a bathroom.

Mr. Seegel said that the request is for modification of a variance. He said that the original variance was granted because of the shape of the lot and nothing has changed concerning that.

Mr. Seegel read the Planning Board recommendation. – modify variance – shape of the lot – originally –

Mr. Sheffield said that the Existing Elevations Drawing shows that the front is an east elevation and the proposed drawing shows the front as the west elevation. Mr. Edwards said that the front of the house faces east. He said that the existing elevation plan is correct and the proposed elevation plan is mislabeled.

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

Mr. Sheffield moved, Mr. Redgate seconded the motion, and the Board voted unanimously to modify the variance, subject to the condition that revised elevation drawings be submitted that show the correct orientation of the house.

ZBA 2019-42, WALTER & TERESA PETERS, 48 SHERIDAN ROAD

Present at the public hearing were Kent Duckham, Architect, and Walter (Fran) Peters, the Petitioner.

Mr. Duckham said that the property is nonconforming for lot size, front and side yard setbacks. He said that the proposal is for an addition on the back, an addition above the one story garage on the right hand side, an entry porch of 50 square feet in the front, and cantilevered bays on the second floor that go into the side yard setbacks.

Mr. Seegel asked if a plot plan had been submitted. He said that the building permit was too small to read. He said that the plot plan should show lot coverage, setbacks and Zoning.

Mr. Duckham reviewed the TLAG calculations. He said that they included a small amount of attic space. He said that they did calculations for the basement and the proposed first and second floor. He said that the existing house is low and garrisons on the sides, with low roof lines that are roughly 5.5 feet. He said that the additions have the same low scale as the existing house.

Mr. Sheffield said that the existing property is 10,440 square feet in a 15,000 square foot zone. Mr. Seegel said that there are four nonconformities. He discussed the findings that the Board would have to make.

Mr. Seegel read the Planning Board recommendation.

Mr. Redgate said that the proposed square footage will be well within the TLAG threshold. Mr. Duckham said that it will be 3,888 square feet in a district where 4,300 square feet is the maximum. He said that the proposed structure will be 411 square feet below the threshold.

Mr. Sheffield asked if a dimension is shown for the height from average grade. Mr. Duckham said that it is shown on Sheet A201. He said that the site slopes down and the average grade is below the first floor level.

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

Mr. Redgate moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to grant a special permit, after making findings subject to Section XVII of the Zoning Bylaw.

ZBA 2019-43, SUN LIFE ASSURANCE CO. OF CANADA, 112 WORCESTER STREET

Present at the public hearing were Scott Spaulding, Viewpoint Sign and Awning, and David Swortz, Morgan Stanley, representing Sun Life Assurance Co. of Canada, the Petitioner.

Mr. Spaulding said that the proposed sign does not meet the bylaw for height, height of letters, and total square footage. He said that the height from grade that is allowed is 15 feet. He said that if you look at the drawings and the entrance of the building you can see why they cannot meet that requirement. He said that is the only place that they can put the sign. He said that the proposed letter height will be 14 3/8 inches where 14 inches is allowed. He said that the total square footage will be two square feet over the area of 15 square feet that is allowed.

Mr. Seegel asked why the letter height is not 14 inch letters, which will meet the requirement. Mr. Spaulding said that they wanted the sign to fit the space. Mr. Seegel said that the request is for a special permit where they could reduce the letter height. Mr. Spaulding said that they could reduce the letter height, which would get them closer to the 15 square feet of area that is allowed.

Mr. Redgate said that you do not see this building and there are no residences around.

Mr. Sheffield asked how much of the building Morgan Stanley occupies. Mr. Swortz said that Morgan Stanley occupies 95 percent of the second floor. He said that there is currently nobody else in the building. He said that they will be occupying approximately 50 percent of the building. He said that Morgan Stanley has been a tenant in the office park at 44 William Street since 1990 and one of the challenges that they had was that they were not able to have signage. He said that one of the appeals for them to stay in Wellesley and bring in the Waltham office, so that they will have 150 employees rather than 90 employees. He said that branding was an important component in the attraction in moving to Sun Life.

Mr. Seegel asked about the hours of lighting the sign. He said that it will be halo illuminated. Mr. Swortz said that most of the employees work from 9 am to 5 pm. Mr. Seegel said that the sign lighting must be shut off by 8 pm.

Mr. Sheffield asked how many other companies are identified in a similar manner in the park. Mr. Swortz said that Sun Life terminated its annuity business and is in the process of bringing in new tenants in multiple buildings. He said that Morgan Stanley is the first business in that building, which is the newer of the three buildings that Sun Life has there. He said that Sun Life has brought in a couple of smaller tenants in other buildings but Morgan Stanley is the largest business that they brought in.

Mr. Seegel asked how parking will be affected with new tenants in the park. Mr. Swortz said that there are a significant number of parking spaces there.

Mr. Sheffield said that for a company that occupies a significant part of the building, this sign makes sense. He said that other businesses may have to identify themselves with ground signage.

Mr. Redgate said that you can only see the sign from the interior of the park.

Mr. Seegel read the Planning Board recommendation.

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

Mr. Redgate said that the Design Review Board voted approval of the proposed sign.

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

ZBA 2019-43, AMY & GREGG BARTON, 18 BREWSTER ROAD

Present at the public hearing was Gregg Barton, the Petitioner.

Mr. Barton said that the request is to build an addition on top of the existing home. He said that it is a nonconforming lot. He said that he lives in the home with his wife, two children and a new baby. He said that they would like to add a bedroom, bathroom and closet above an existing three season porch, which they closed in two years ago when they moved in.

Mr. Sheffield said that the drawings show that the construction is on posts. Mr. Barton said that an engineer will be working on the project. He said that the photographs show that it is more closed in. Mr. Sheffield said that the drawings do not represent the current condition and need to be corrected. He asked if the structure will be supported on the same sona tubes. Mr. Barton said that the existing sona tubes were assessed. He said that the engineer is convinced that they will hold up the second floor.

Mr. Sheffield said that the drawings should be revised to show what the actual construction conditions will be. Mr. Seegel said that the Board will not release the decision until revised plans are submitted.

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

Mr. Seegel read the Planning Board recommendation.

Mr. Redgate moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to grant a special permit, subject to a condition that the plans be amended to show actual conditions.

ZBA 2019-45, FRANK PRALL, TRUSTEE, 41 HOWE STREET REALTY TRUST, 41 HOWE STREET

Present at the public hearing were Kristin Dibella and Frank Prall, the Petitioner.

Ms. Dibella said that she and her husband have lived at 41 Howe Street for 13 years. She said that, over the years, they have done a few construction projects. She said that she is an interior designer, so the integrity of the house is very important to her. She said that they went before the Historical Commission for a previous variance request because it is important to them to maintain the character of the house. She said that they have made substantial improvements to the house.

Ms. Dibella said that they live in the house with their three children, aged thirteen, nine and two years old. She said that the house is a little too small for them at approximately 1,800 square feet. She said that they have three bedrooms. She said that with the children at such different ages, with a boy in the middle, it

would be hard to make them share rooms. She said that the request is to raise the roof approximately four feet and add dormers. She said that they do not have a basement and have no attic space over four feet. She said that the lot is nonconforming at under 10,000 square feet. She said that she spoke to the Building Department about adding by-right dormers but decided to go ahead with this plan so that they can have a look to the house that is appropriate for the neighborhood. She said that the existing average height is 26 feet and that will be increased to 29 feet 8 inches. She said that the height on the driveway side will be 32 feet 7 inches because of the sloping topography. She said that a special permit was granted for a house at 68 Crest Road with a similar roof height. She said that the request is to raise the roof and add some dormers.

Mr. Seegel said that he was troubled with the request. He said that there are a number of nonconformities, including the house at the rear. Ms. Dibella said that the house at the rear is grandfathered and has been rented for more than 100 years. She said that two years ago a complaint was filed in the Building Department regarding that use. She said that got documentation from the Historical Commission showing a census that shows the grandfathered use.

Mr. Seegel said that the lot is undersized, the front yard setback is only 18.9 feet, the left side yard setback is 15.2 feet, and the right side yard setback is 14.8 feet. He said that the Board has been generous over the years by granting permits but the addition of another floor, which would add another nonconformity, is not reasonable. He said that a lot of the neighbors are not happy with the plan. He said that there are two homes that would be very much adversely affected by adding another floor. He said that the windows would look down on the neighbors' bedroom windows. He said that what is proposed would be substantially more detrimental to this neighborhood.

Ms. Dibella said that she was not approached by any of the neighbors. She said that she has letters of support from three neighbors and the abutter next door is present at the public hearing. She said that she has tried to do things tastefully and not overbuild. She said that the house is 1,800 square feet and is significantly smaller than other houses in the neighborhood. She said that Mr. Prall's family has owned the house for 100 years.

Mr. Redgate said that there is a large shed that is not shown on the plot plan. Ms. Dibella said that the shed is 10 feet by 10 feet and she did not realize that it had to be shown on the plan since it did not require a permit. She said that the other small structure is a kids tree house.

Ms. Dibella said that the addition will just be over the main portion of the house, not over the farmers porch.

Mr. Sheffield discussed letters that were submitted to the Board. He said that one of the letters discussed a structure that might overhang the property line. Mr. Redgate said that a photograph that was sent to the Board shows the shed being rectangular. Mr. Prall said that the shed that is close to the neighbor's property is 8 feet by 12 feet. Ms. Dibella said that it is approximately eight feet from the fence.

Mr. Seegel said that letter from an abutter discusses taking away their privacy and contractors going onto their property during the prior construction project. The neighbor said that there is no place for contractors park around there. Ms. Dibella said that she is open to working with the neighbors.

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

Alison Lucas, 28 Howe Street, said that she lives across the street. She said that according the elevation plans that were submitted, there will be four dormers, or technically a fourth structure that does not have

windows because it meets another sidewall of a dormer. She said that there are four windows in the dormer and another window in the gable. She said that the dormer begins at the peak of the roof line rather than being set in. She said that there appears to be a two to three foot setback from the sidewall of the dormer on the left. She said that there is another dormer shown on the right side elevation at the peak of the ridge line with two more windows with not much of a setback from the sidewall. She said that the roof is almost flat on the left elevation. She said that the neighborhood has a lot of traditional houses with peaked roofs. She said that if there is a dormer, it is peak and encloses a window, unlike the proposed expanded roof approach with minimal setbacks on both sides. She said that 17 new windows are proposed. She said that the house is already on a high grade. She said that there are Air BNB renters who watch them eat their breakfast if they eat outside. She said that the idea of having an additional level above will loom over the neighborhood and will block sun and light. She said that it will create a horrible feeling of surveillance for her in her own yard. She said that going two more floors from the main level is outrageous.

Mary Roberts, 21 Howe Street, said that she lives two doors down from 41 Howe Street. She said that she has lived there for 25 years. She discussed intensity of use of the property. She said that many of the neighbors supported the two prior projects that came before the Board. She said that this proposal will exacerbate the intensity of use on the property. She said that over the past few years, there have been frequent short term renters on property and not sufficient parking to accommodate the vehicles. She said that adding three new bedrooms and a bathroom will increase the ability to have more short term renters with more vehicles.

Gardner Morse, 24 Howe Street, said that he and his wife live three houses down from 41 Howe Street. He said that he is concerned about this project. He said that he looked at the plans and found them to be hard to decipher. He said that it looks like there will be a full third floor that will dominate the street and be out of character with many of the houses on the street, many of which were built in the 1870's and early 1900's.

Joel Bloom, 20 Howe Street, read a letter from abutters, Catherine Riley and Barbara Werner, 26 Howe Street.

Mr. Seegel said that the Riley/Werner letter was submitted to the Board. He said that the Board also received letters from Suzan Kelley, 23 Howe Street and Meg and Steve Cacciola, 45 Howe Street.

Mr. Bloom said that he has been a resident of 20 Howe Street for 45 years. He said that he agrees with the neighbors who are opposed to this project. He said that the Board has been generous in the past to allow additions to this home, which is on a very small lot. He said that this is the third attempt to increase the size of the house which is on a hilly, curvy, narrow, and dangerous road. He said that the house is rented frequently in its entirety. He said that several businesses are carried on there that create a good amount of traffic. He said that delivery of large oversized packages is a regular occurrence. He asked that the Board deny the permit because it significantly adversely affects the neighborhood. He said that it will be an exponential increase of the building and its use.

Edward Kelley, 23 Howe Street, said that he lives directly to the right of 41 Howe Street. He said that there have been several projects in the neighborhood going on. He said that everything that the Petitioners have done has enhanced the neighbors' property values. He said that the Petitioner's house is shorter than others in the neighborhood. He said that four feet will not make it the tallest. He said that he is in favor of the request.

Ms. Dibella said that they do Air BNB their house. She said that there is a need for people to rent while they are doing renovations. She said that the majority of their renters live in Wellesley. She said that they typically rent their house during vacations when the kids can be away from school. She said that she is willing to compromise on the plans.

Mr. Seegel said that he did not think that the proposed project is appropriate. He said that the plans do not make sense.

Mr. Seegel read the Planning Board recommendation.

The Board discussed allowing the petition to be withdrawn without prejudice.

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

ZBA 2019-46, WILLIAM & JENNA DICKSON, 47 AVON ROAD

Present at the public hearing were William and Jenna Dickson, the Petitioner, and Nick Paollucci, Architect.

Mr. Dickson said that the house is on an existing nonconforming lot with nonconforming front and side yard setbacks. He said that they bought the home just after Christmas. He said that their hope has always been to expand it from a two bedroom, one bathroom home of 1,038 square feet to a three bedroom, two bathroom home. He said that the plan is to rebuild the second floor on the same footprint. He said that, in speaking with the neighbors and the Architect, and trying to maintain the character of the structure, they came up with a plan that contemplates completely rebuilding the second floor of the home, making it a full second floor while maintaining the same roof height.

Mr. Seegel said that the Board received letters of support from the Santoshes, Gordons, Kamms and Herzogs.

Mr. Redgate confirmed that there will be no increase of the nonconformities. Mr. Dickson said that they will completely maintain the existing footprint and just adding space on the second floor.

Mr. Sheffield said that it is a nice set of plans. He said that there is an extra line on the front elevation shown on Sheet 4. He said that the roof curves rather than have a sharp break. He said that since the current recessed doorway gives some cover at the entrance, by pushing it out and having a lobby, they will no longer have a cover. He said that there is an opportunity to extend the roofline over the door to provide weather coverage. Mr. Dickson said that they will consider making that change.

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

Mr. Sheffield moved, Mr. Redgate seconded the motion, and the Board voted unanimously to approve a special permit for the proposed construction, as presented.

ZBA 2019-47, UNIVERSALIST SOCIETY OF WELLESLEY, 309 WASHINGTON STREET

Present at the public hearing was Karen Mariscal, Board Member, Unitarian Society of Wellesley, the Petitioner.

Ms. Mariscal said that the request is for 35 non-accessory parking spaces. She said that there is a total of 62 parking spaces at the Church. She said that a new start up company, Boxcar, came to the Church with an app that can reserve a parking spot within two weeks ahead of time right down to immediately available. She said that parking is by the day. She said that Boxcar takes 25 percent of the fee.

Mr. Seegel said that the side of the parking lot near the Historical Society is sometimes devoted to school buses. Ms. Mariscal said that the app allows them to shut parking down for the day. She said that if they decide that they do not want to have parking on the day of the Farmers Market, they will shut the parking down for the day. Mr. Seegel said that occasionally the school children visit the Historical Society and the Board does not want to have any interference with that. Ms. Mariscal said that there may be times when they need the entire parking lot for the Church. She said that this will typically be a Monday to Friday operation. Mr. Redgate asked if the app can prioritize Wellesley residents in any way. He said that this may be encouraging traffic into the town as an alternative to parking at the commuter rail station. He said that short term use for the local businesses would be a better use of that technology than an all day commuter rail parking for people who are from out of town.

Mr. Seegel said that the special permit should be amended and approved for one year to see how it goes.

Mr. Redgate moved, Mr. Sheffield seconded the motion and the Board voted unanimously to renew the special permit, as amended for nonaccessory parking in 35 parking spaces, between the hours of 5am to 9 pm, subject to renewal in one year renewal and removal of the existing condition that requires that parking be assigned on a monthly basis, so that parking will now be assigned on a daily basis.

Ms. Mariscal said that Boxcar shows a stencil on the pavement of the available parking. She said that the Church has not figured out which spaces will be available but they will probably be close to the Historical Society

Mr. Redgate said that people will buy a parking space for the day as commuters and will most likely drive to the space, complete their transaction electronically and then walk to the train station.

Mr. Seegel said that it would be preferable not to have the parking space along Washington Street. Ms. Mariscal said that the spaces are not along Washington Street but are either perpendicular or behind the Church. Mr. Redgate said that the spaces that are closest to the commuter rail station make the most sense.

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

As there was no one present at the public hearing, the petition was continued to June 6, 2019.

As there was no further business to come before the Board, the hearing was adjourned at 9:55 pm.

Respectfully submitted,

Lenore R. Mahoney
Executive Secretary