

**ZONING BOARD OF APPEALS**

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WALTER B. ADAMS  
DEREK B. REDGATE

September 24, 2019

7:15 pm

Juliani Meeting Room

Town Hall

Zoning Board of Appeals Members Present:

J. Randolph Becker  
David G. Sheffield  
Robert W. Levy  
Walter B. Adams  
Derek B. Redgate

**PUBLIC MEETING**

Present at the public meeting were David Himmelberger, Esq. and Jimmi Bazzari, the Petitioner. Mr. Himmelberger request for a minor modification of a previously granted permit, ZBA 2018-52. He said that the two requests involve extension a rear extension of the previously granted addition that is approximately 57 square feet, and adding on a second story to a pre-existing sunroom on the front left of the house. He said that the rear extension is fully within the sideline setback.

Mr. Himmelberger said that he bumped into his client at Town Hall and asked him how his project was going. Mr. Bazzari said that they decided that they could get a little more room by extending the rear addition by five feet, which the Building Inspector was willing to allow a building permit as long as everything is within the setback. He said that the fact that there was an underlying special permit had not been part of the conversation. He said that when he went back to speak to the Building Inspector, it was agreed that it should be a modification of the special permit. He said that, at that point, his client said that they would also like to go up over the existing sunroom on the left side that is within the setback. He said that the proposed change there would not further encroach into the setback. He said that the request is that the Board make a determination that both what has been done and what the Petitioner would like to do are minor modifications and approve them. He said that the 5 foot by 11 foot extension that was put on is outside of the setback area. He said that they are proactively seeking a determination that adding a second story to the existing sunroom on the left side that is 7 feet wide by 12.9 feet deep. He said that the plans that were submitted show that the additional 142 square feet will bring the TLAG 3,989 square feet, which is below the trigger of 4,300 square feet for a 15,000 square foot district. He said that if the mudroom had been proposed as it is now standing and if the plans originally called for the second story addition, there would not have been anything to preclude the Board from making a determination that is it not substantially more detrimental to the neighborhood than the pre-existing condition. He said that the house sits up high on Route 9 on a stone wall on an oversized lot. He said that they are hoping that the Board will grant retroactive approval for the mudroom and find that it is not a significant increase but a minor modification and that adding on the sunroom is a minor modification.

Mr. Levy said that it is a two step process. He said that the Board has to determine if it is a minor modification, which can be done at a public meeting. He said that the standard is not whether the Board would have granted it originally. He said that he appreciated that the mistake was acknowledged.

Mr. Levy asked if the Petitioner spoke with the abutter who lives in the house that is closest to the west. Mr. Himmelberger said that they spoke with the abutter to the rear. He said that his client has not spoken with the abutter to the left because it is a rental property.

Mr. Levy confirmed that no abutters came to the previous hearing.

Mr. Adams asked about the driveway by the sunroom that leads to the property behind. Mr. Bazzari said that it is a common driveway. He said that Mr. Toffler is aware of the plans.

Mr. Adams said that the original special permit was to extend a nonconforming structure. He said that the addition at the back was fully compliant. Mr. Himmelberger said that it still is. He said that the petition came before the Board because the left side yard setback is 15.4 feet. Mr. Levy said that the front yard setback is nonconforming as well. He said that there appears to be a good distance to the house to the right. Mr. Adams said that it is a very unusual lot that offer challenges in terms of where the historic building is located and the rest of the lot and the topography as well.

The Board discussed whether the proposed changes are a minor modification of the approved special permit. Mr. Adams said that he considers adding onto a first floor that is already nonconforming on a case by case basis. He said that in this case, given the substantial stone wall that serves as a visual barrier, it would not be a more detrimental condition that it now has a second story to it. He said that it would be a minor modification that would not impact the original decision. Mr. Redgate said that he agreed.

Mr. Adams moved, Mr. Redgate seconded the motion, and the Board voted unanimously to determine that the addition of a second story to an existing nonconforming sunroom with a 15.4 left side yard setback and construction of a five foot extension on the north side of house are minor modifications that do not require a public hearing.

ZBA 2019-67, WELLESLEY PLAZA LLC & STATE STREET CENTER LLC, 452-552 WASHINGTON STREET, 10 & 16 STATE STREET

Mr. Levy said that the Board did not receive a lot of new material since the last time it met on this petition.

Present at the public hearing were Michael Doherty, Gravestar, Manager of Wellesley Plaza, Jim Strain, representing Whole Foods, and Bob Michaud, MDM Transportation.

Mr. Doherty said that since the previous hearing, they have had two meetings with the Wetlands Protection Committee (WPC). He said that they made some changes to the site, based on comments from Town Boards. He said that they made adjustments and improvements to the stormwater drainage system. He said that the Town will hire a third party to do a peer review of the stormwater system design. He said that there will be an Operation and Maintenance Plan for the design. He said that they expect that process to take approximately two months to complete. He said that a lot of the issues that were brought up at the previous hearing will be addressed in the plan. He said that the intent is, instead of refile plans as they are revised, to submit a full set of plans that have been reviewed.

Mr. Levy said that ZBA is usually the last stop and it prefers to have all other permitting done. He said that the Board does not want to operate on a dual track with the WPC.

Mr. Doherty said that they met with DPW and Engineering in July and they provided a review of the plans. He said that the Petitioner will not come back before the ZBA until they are done with WPC permitting.

Mr. Adams asked about getting a peer reviewer for traffic. He said that the Board heard from neighbors about serious problems in that area. Mr. Levy said that the Board concluded that a peer reviewer would be required. He said that will happen once there is a traffic report submitted.

Mr. Michaud said that a traffic report was prepared on August 21, 2019. He said that they presented the report to Engineering and DPW and understood that there were certain design questions regarding alignment of the driveway at Atwood Street. He said that it was more of a geometric exercise rather than a study. He said that moving the driveway had a positive effect on the queue of traffic at the signal. He said that it provided a more traditional intersection alignment. He said that Dave Hickey, Town Engineer, was going to reach out to BETA to get their initial input for review.

Mr. Adams said that at the last meeting the plan showed the revised alignment. He said that someone from the Petitioner's team stated that the revised alignment was recommended by DPW. He said that there was a lot of public comment about whether that was a good decision. He said that it is very clear that there are significant existing traffic problems with State and Atwood Streets. He said that the number of parking spaces will increase by approximately 15 percent. He said that the difficult traffic issues on Atwood Street has raised everyone's concerns about the impact of this development.

Mr. Adams said that he visited the site mid-afternoon today and it was very crowded. He said that there were very few available spaces. He asked if any of the agreements that allow teachers to park in the lot are still in effect. Mr. Doherty said that parking is just for customers. He said that the agreement with the teachers was during the High School construction. He said that the red line spaces are left over from the teacher parking.

Mr. Adams said that there is a real problem with Atwood Street and this project will not make it better. He said that many people will agree that Whole Foods is an amenity to Wellesley that people appreciate having and appreciate that it is not a megastore. He said that it is clear that Gravestar and Whole Foods have not been able to manage the location so close to a watershed area, notwithstanding that some efforts had been made. He said that it is clear that the stormwater mitigation measures did not work and no one tried to figure out a way to make it work. He said that the Board needs to move to a point where it can be assured of and have checks and balances that whatever gets approved at the site will satisfy the various conservation and water protection boards.

Mr. Levy said that this project has never gone through Site Plan Approval. He said that Whole Foods took over an existing facility that had been operated by Star Market. He said that this is the first time that the town has looked at the project in the context of Site Plan Approval, where it can look at traffic, parking, sound, and all of the elements that the Board looks at in a traditional Site Plan Review process. He said that the Board will use this as an opportunity to review the project from top to bottom within its jurisdiction. He said that a lot of members of the public have concerns. He said that he considers Whole Foods to be an amenity. He said that parking at this facility is a great improvement over the previous location. He said that he was disappointed that there was nothing substantial before the Board at the second hearing.

Mr. Redgate said that the Board should look at the history of the location. He said that there was some traffic work done with the one-way entrances. Mr. Levy said that the prior approval for the site was for signage. He said that the Board used that opportunity to make some improvements but there has never been a full Site Plan Approval where other town departments can comment. Mr. Redgate said that he recalled BETA making recommendations. Mr. Doherty said that they worked with town departments on the sign project. He said that it was looked at comprehensively but did not come for Site Plan Approval. He said that they do have a traffic report that can be submitted and put out for peer review.

Mr. Redgate said that the Board should look at hard numbers for people heading westbound turning into the property. Mr. Levy said that most Site Approvals that the Board sits on are done prior to the project being built. He said that this is existing. He said that the Board will have the benefit of real numbers for this.

Mr. Adams said that the Engineering Division should be more involved with this project. He said that the traffic problems seem to happen at certain times of the day. He said that it is clear that people are using Atwood Street as a cut around.

Mr. Levy said that SPA is an anomaly. He said that it is not a permit that is recognized by State Zoning statute. He said that it is only a creature of Wellesley's Zoning Ordinance, similar to other municipalities. He said that it is not a permit that has to meet a State standard and every town treats it differently. He said that the purpose of site plan is to review all of the site impacts, whether it is traffic, lighting, drainage, utilities, wetlands and any impact that the project has on the Town's services and the community at large. He said that it is not a permit that the Board can deny but it can impose conditions.

The Board discussed engaging BETA for peer review of the traffic report. Mr. Levy said that configuration of the parking spaces should be included in the report.

Mr. Levy said that the Town has a new bylaw for lighting. He said that the Board will want to know that there is as little light spillage as possible onto neighboring properties. Mr. Redgate said that the Board should see some information landscaping for the entire lot.

Mr. Redgate said that typically there are a lot of fall sports going on in the area at this time of year. He asked if some of the traffic is being caused by people parking in the lot to attend sports events. Mr. Michaud said that this plaza is no different from other plazas that are anchored by Whole Foods. He said that Whole Foods is a very popular venue. He said that his experience with this site dates back to 2010 when MDM evaluated the plaza when it was being re-tenanted and was subject to BETA's review. He said that the traffic there has been catalogued. He said that MDM was not asked to review the Washington Street driveway but to identify the best place to relocate the driveway and what it should look like. He said that they quantified the driveway and what happens at Atwood Street and do not expect a change in the volume of activity generated by what is a very successful plaza. He said that the plaza has been busy for many years. He said that the intent of this exercise is to provide a better customer experience. He said that the intent is to identify how they can better accommodate the demand in a way that is more consistent with good design practice. He said that the plaza is crowded frequently and people are parking where they should not. He said that the proposed changes are not tied to expansion of the use but to improve circulation aspects of the site. Mr. Levy said that the Board also has to consider the neighborhood experience. Mr. Michaud said that MDM takes the neighbors' concerns seriously.

Mr. Levy said that the Board will talk about traffic and parking at the next hearing.

Robert Hutchinson, 43 Atwood Street, said that several neighbors from State Street, Morton, Sessions and Atwood signed a petition with over 40 signatures opposing this plan to expand the parking lot. He displayed a picture of what traffic looks like when he leaves for work in the morning. He said that he submitted two recommendations for Gravestar to look at. He said that one recommendation is to leave the State Street access where it is today and also to change the Washington Street access. He said that he included a photograph that shows the "No Entry" signs. He said that access is underutilized and was poorly designed from the get-go. He read an excerpt from the Zoning Bylaw regarding location of driveways. He said that moving the access to across from Atwood Street will increase the conflict with public traffic. He said that this is located between two public schools, the High School and the Middle School, and in the afternoon there are a lot of kids going home. He said that the line of sight leaving Atwood Street currently is to look left and look right. He said that moving the driveway will add having to look across. He said that moving the driveway will impede line of sight. He said that Gravestar needs to continue to work on the design with traffic and safety first in mind.

Mr. Hutchinson said that Gravestar or Whole Foods have not been taking care of the driveway and the stormwater system. He said that runoff continues to happen. He said that conservation land has been impacted. Mr. Levy said that the Board will have a professional traffic engineer representing the town give

their professional opinion on the best way to make this work. He suggested that Mr. Michaud get in contact with BETA to discuss the traffic issues.

Richard Watts, 43A Atwood Street, said that he and his wife submitted written comments on September 10, 2019. He said that the focus of their comments was opposition to the alignment of the entrance with Atwood Street. He said that they met with the Engineering Department and their main concern seemed to be the backup on State Street coming from Washington Street, before the turnoff. He said that they thought that if they move the entrance further away from Washington Street, there would be less of a problem with the backup. Mr. Watts said that he also questioned the value of the traffic study. He said that traffic data was collected in August of 2019, which is not a high traffic time. He said that school is not in session.

Mr. Watts said that the Planning Board recommendation was sent to the Board on August 7, 2019. He said that he strongly supports their recommendations. He said that he also supports the notice of violation from the WPC.

Teresa Rocha, 40 Atwood Street, said that she lives a couple of door down from the corner. She said that she was concerned about the safety of moving the entrance to align with Atwood Street. She said that her daughter walks to school in the morning to the High School. She said that during the winter it can be dark out after school and early in the morning. She said that funneling traffic from Whole Foods onto Atwood Street is a concern. She said that it is not a commercial street and there are a lot of kids walking on it.

Phyllis Carter, 10 Sessions Street, said that she is concerned about traffic and the alignment of the driveway with Atwood Street. She said that it is taking commercial traffic onto a residential street. She said that her street is a ping pong to get through at times. She said that she is worried about fire safety. She questioned whether a fire truck can get down the street. She asked that the Fire Department look at getting a fire truck down the street at certain times. Mr. Levy said that all town departments, including the Police and Fire Departments, are notified of this application and provide comments to the Board.

Matt Connon, 19 Atwood Street, said that he is also concerned about emergency equipment access. He said that on Sundays, traffic for St. Paul's makes Atwood Street impassable at times. He said that if there is potential for increased traffic, that situation could become even worse. He asked that the traffic study look at the totality of Atwood Street, not just State Street. He said that the potential for St. Paul's School to reopen could exacerbate the situation. He asked that they look at everything that is going on. Mr. Adams agreed.

The Board discussed continuing the hearing. He said that the Board likes to have materials submitted at least 10 days ahead of the hearing. Mr. Doherty said that the intent is to go through both peer reviews and submit an updated set of plans.

The Board said that the hearing would be continued to December 3, 2019. Mr. Redgate said that if wetlands process is not complete, the Board will continue the hearing until it is completed.

Mr. Adams moved, Mr. Redgate seconded the motion and the Board voted unanimously to continue the hearing to December 3, 2019.

As there was no further business to come before the Board, the hearing was adjourned at 8:41 pm.

Respectfully submitted,

Lenore Mahoney  
Executive Secretary