



## ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5918

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

March 5, 2020  
7:30 pm  
Juliani Meeting Room  
Town Hall

Zoning Board of Appeals Members Present:

- J. Randolph Becker
- Richard L. Seegel
- Robert W. Levy
- Walter B. Adams
- Derek B. Redgate

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

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

Mr. Ramage said that the Board had a question about TLAG at the last meeting. He said that he did the calculations for the existing and the proposed project. He submitted a TLAG affidavit. Mr. Levy said that the property is located in a 10,000 square foot district where the threshold for Large House Review (LHR) is 3,600 square feet. He said that proposed total TLAG will be 4,736 square feet. He said that existing TLAG is 1,960 square feet. He said that the 1,000 square feet excess of TLAG coincides with the Planning Board recommendation who stated that an increase of 140 percent on a 9,700 square foot lot will be substantially more detrimental to the neighborhood than the existing nonconforming structure. He said that the Planning Board acknowledged that the houses on either side are of comparable size but are on conforming lots and were built prior to the adoption of LHR. He said that the Planning Board recommended that the ZBA deny the application.

Mr. Adams asked the Petitioner why they thought it was necessary to put such a large house on this lot. Mr. Ramage said that he did not think it was large. He said that they have three young children and have a need for four bedrooms. He said that with the expanded kitchen they would end up with approximately 3,600 square feet of living space. He said that the roof pitch increases the TLAG by quite a bit. He said that it suits New England to have steeper roofs. He said that some builders lower the roof to lower the TLAG but he did not like that design. He said that he asked the architect to design the house the way that Mr. Ramage thought looked best.

Mr. Levy said that the project is before the Board because it is an undersized lot that is 400 feet under the minimum. He said that if this was a conforming lot, they would have been to go to the Planning Board for LHR. He said that although this is exempt from LHR under the bylaw, the Board has historically looked at the LHR criteria in its analysis. He said that the Board's charge is to make a determination if the proposed

structure will be substantially more detrimental to the neighborhood than the current existing structure. He said that the Board felt that giving credence to some of the LHR criteria is fair game in this procedure.

Mr. Adams said that the project will not increase any existing nonconformities.

Mr. Ramage said that they thought that the house was reasonable for the lot shape. He said that there will be less than 25 percent coverage. He said that they were trying to build something that they can stay in.

Mr. Redgate said that LHR does not prohibit houses of this size but by supplying the additional information for LHR, there is an attempt to mitigate the size of the house. He said that the Board should apply the standards for LHR if the Petitioner wants to build a house of the proposed size.

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

Mr. Redgate asked for revisions to the elevation plans in the original application. Mr. Ramage said that the Board said that it typically sees separate plans for existing elevations and proposed elevations. He acknowledged that his elevation plans are overlaid and are hard to read.

Mr. Adams discussed continuing the petition again so that more information can be provided, including a landscape plan. Ms. Ramage said that they currently have flowering trees. Mr. Adams asked about screening the large house from the neighbors. Mr. Ramage said that their house is overlooked by larger homes. He said that their home is located in a fish bowl arrangement with the neighbors.

Mr. Levy said that the house next door at 27 Overbrook Drive is on a pork chop lot. Mr. Ramage submitted a Google street views. Mr. Levy asked if the Petitioner had spoken with the neighbors about the plans. Mr. Ramage said that the close neighbors have encouraged them. He said that he had not spoken with the neighbors who are behind them.

Mr. Adams said that he agrees with Mr. Ramage about the pitch of roof, where it was minimized to build a large house and not go over TLAG. Mr. Levy said that some builders use trusses in the attic to deal with TLAG. Mr. Ramage said that he was told that trusses are part of the living space. Mr. Levy said that this would exceed the TLAG in a 15,000 square foot district. Catherine Johnson, Planning Board, said that the LHR Bylaw was changed in 2017 to eliminate the exemption for trusses in attic spaces. She said that any space in the attic that is five feet or greater must be counted.

Mr. Redgate asked Ms. Johnson if there is a checklist of things that need to be provided with an application for LHR. Ms. Johnson said that there are criteria for open space, landscaping, stormwater or drainage, mass and scale. She said that the other criteria have to do with traffic circulation and are not necessarily applicable to every property.

Mr. Adams said that 46 Overbrook Drive appears to be at a low point. He asked if there have been any water problems. Mr. Ramage said that their property drains toward the street and Reed's Pond is across the street. He said that the sandy material was brought in before they bought the house in 2010. He said that the lot is fairly level. He said that he believes that the water percs into the ground. He said that currently there are no drywells or french drain on the property. He said that he would consider putting in a drywell. Mr. Redgate said that with a larger house there are more impacts and the Board looks at ways to mitigate them. Mr. Adams said that drainage and additional runoff are important things to consider. Mr. Levy said that the Board would like to see a drainage plan. He said that although not all of the LHR criteria should be reviewed, drainage and landscaping are germane to this project. Mr. Ramage said that the roof line will change minimally

Mr. Seegel said that the LHR bylaw does not apply to nonconforming lots. He said that the Board has never held people to strict compliance to LHR but has always considered it and imposed some conditions but it was never the deciding factor. Mr. Levy said that drainage is an issue that could affect the neighborhood. He said that none of the abutters have complained about the screening. He said that the TLAG will exceed the threshold for a 15,000 square foot district. He questioned whether something could be done to make it a little bit smaller. He said that it is a big house for a small lot. Mr. Adams said that the proposed house will not dominate the surrounding houses on the same side of the street. He said that his preference is for the Petitioner to come with a plan that shows that water stays on the property.

Mr. Redgate asked if there is a way to reduce the size of the structure. Mr. Levy said that the concern is not the TLAG but the mass of the structure. Mr. Ramage said that they can eliminate the attic.

Mr. Redgate said that he would be willing to review the house at the currently proposed size if there was a more complete application package. He said that it hard for the Board to understand the massing without the existing versus the proposed elevation drawings. Mr. Levy said that the Board will need to see a drainage plan.

Mr. Becker said that the property is located in a Water Supply Protection District (WSPD) and the bylaw requires recharge of all runoff from impervious surfaces unless the analysis shows that it is not feasible.

The Board discussed continuing the hearing. Mr. Levy said that the Board will need to see current elevations and a drainage plan. Mr. Adams said that it would be good to see the existing and proposed elevations shown side by side. He said that the Petitioner should also take the requirements for a WSPD into consideration.

Mr. Adams moved, Mr. Redgate seconded the motion, and the Board voted unanimously to continue the petition to May 7, 2020.

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

Present at the hearing were David Himmelberger, Esq., Reid Diamond and Nick Monahan, representing Jefferson Road 18 LLC.

Mr. Himmelberger said that a number of things has changed since the previous hearing. He said that all issues that were voiced by the Board or the neighbors have been addressed. He said that the house was moved closer to the street, the rear deck and stairs were removed, the door off of the kitchen was replaced with a window, and cut sheets were submitted for dark sky lighting. He said that all of those changes were incorporated in the revised drawings that were submitted.

Mr. Himmelberger said that the Board requested that further information regarding the lot and its grandfathered status as a pre-existing nonconforming lot be provided. He said that at the previous hearing he said that the Assessor's records indicated that the house was built in 1938, which pre-dates the change in the bylaw for minimum lot size. He said that the information in the database was inaccurate in that the house was actually built in 1946. He said that Wellesley enacted Zoning Bylaws (ZBL) in 1925 and 18 Jefferson was designated as being located in a single family residence district. He said that the Town amended the ZBL in 1937 to require a minimum of 10,000 square feet. He said that the ZBL was amended again in 1940 to create 10,000, 15,000 and 20,000 square foot districts. He said that he provided a Zoning Map from 1940 that shows that Jefferson Road was located in a 10,000 square foot district. He said that the ZBL and Zoning Map was amended in 1951 to rezone the Sheridan Road area in which Jefferson Road is located from a 10,000 square foot to a 15,000 square foot district. He said that he attached the 1951 Warrant Article and the new Zoning Map from 1952. He said that the house itself was built in 1947. He said that he submitted the

original building permit dated October 27, 1947 that included an as-built survey depicting the lot as containing 10,582 square feet.

Mr. Himmelberger said that 18 Jefferson Road was originally part of a Lot 2 on a plan recorded in 1937. He said that Lot 2 had frontage on Jefferson Road. He said that it was re-divided in 1947 and a new plan was recorded where Lot 2 became Lot 2 B, containing 10,582 square feet. He said that when the lot was created in 1947 it had 10,582 square feet, which was lawful because it was in a 10,000 square foot district.

Mr. Himmelberger said that the lot at 18 Jefferson Road abuts 14 and 22 Jefferson Road, 242 and 248 Oakland Street. He said that he provided the deed history for all five lots to show that none of the lots were in common ownership at the time that the Zoning was changed, after the house at 18 Jefferson had been built on a lawful 10,000 square foot lot. He said that the Warrant Article from 1951 acknowledged that many of the homes had already been built on undersized lots. He said that the evidence is clear that at all times 18 Jefferson Road was a lawfully sized lot. He said that in 1951, when the Zoning district changed to 15,000 square feet, the lot was not in common ownership with any abutting lots.

Mr. Levy said that there are two issues. He said that that the prior structure was a lawful pre-existing nonconforming structure is not in dispute. He said that once the house is removed, the issue is whether you lose the grandfathering status. He said that now the lot is nonconforming because it is undersized for the district.

Mr. Himmelberger said that he argued at the previous hearing that they did not have to go through the analysis that he just shared with the Board because there was no intent to abandon and abandonment is a requirement. He said that his research shows that it was a lawfully sized lot and it is a pre-existing nonconforming lot because, at the time that it was first built upon, it was a lawfully sized lot. He said that when the dimensions were increased by re-zoning, the lot itself became pre-existing nonconforming.

Mr. Levy said that Section 6 refers to nonconforming structures and uses, not lots. Mr. Himmelberger read an excerpt from Section 18A of the ZBL and said that it specifically addresses this particular instance.

Mr. Adams said that the Zoning Act allows a single family dwelling to be built on a lot that has at least 5,000 square feet and sufficient frontage. Mr. Levy said that the Zoning Act prohibits building on a lot with less than 5,000 square feet but does not allow it for a lot over 5,000 square feet. Mr. Himmelberger read an excerpt from Section 18A of the ZBL. Mr. Levy questioned why the petition is before the Board if the house could be built as a matter of right. He said that the request before the Board is for a Section 6 Finding. He said that the Petitioner can apply for a building permit and if he is denied, can appeal to the Zoning Board. Mr. Adams said that this lot has more than 5,000 square feet and more than 50 feet on frontage, which is buildable lot as a matter of right. Mr. Himmelberger said that the research was not performed prior to coming before the Board the first time on the original special permit application, where based upon the fact that there is a nonconforming lot and a house on a nonconforming lot that they wanted to build a new house on, it looked like every other special permit for a nonconforming lot. He said that he was previously unaware of instances in Wellesley where square footage requirements in set Zoning Districts was increased.

Mr. Levy questioned whether the matter is appropriately before the Board. He said that Mr. Himmelberger is looking for a special permit finding under Section 6 and his argument is that the lot is buildable as a matter of right. Mr. Himmelberger said that his client had submitted a Demolition Plan that indicated that they would demolish and construct a new structure. He said that the Building Department issued the Demolition Permit and when his client applied for the Building Permit, the Building Department said that they would not have issued the demolition permit if they had understood that this was a nonconforming lot size. He said that the Building Department did not have the benefit of the research. Mr. Levy said that if you apply for a Demolition Permit, no matter what size lot you are on, you are entitled to get one if you meet the criteria. Mr. Adams questioned Mr. Grant's determination that a special permit was needed to demolish the building.

Mr. Levy discussed allowing the petition to be withdrawn without prejudice and seeking a building permit. He said that if the Building Department refuses the building permit, the decision can be appealed to the Zoning Board. He questioned whether this would be appropriate for a Section 6 Finding because it is not a pre-existing nonconforming structure. Mr. Himmelberger discussed nonconforming lots and structure. Mr. Levy said that he had trouble making a finding that this would not be substantially more detrimental than the pre-existing nonconforming structure when it is a vacant lot. Mr. Himmelberger said that the Board should not be looking at it as a vacant lot. He said that they submitted pictures and dimensional plans of the house that was demolished. He said that the only issue is that, with no intent to abandon any nonconforming use of the lot, the house came down. He said that the structure was not abandoned. He said that abandonment is a term of law that requires intent. Mr. Levy said that it is not a use because it will be used as a single family. He said that the Statute refers to nonconforming structures, not lots. Mr. Himmelberger said that it was a nonconforming structure by virtue of being on a lot that does not conform with the current bylaw for a 15,000 square foot district. He said that this is exactly like the case in Bjorklund v Norwell where the lot size requirement was increased and they were building a house that was fully compliant. He said that the Court said that they still had to compare it because it was on a nonconforming lot size. He said that abandonment is not accomplished when you intend to build a new structure.

Mr. Adams said that the Board cannot make a determination that it is not more detrimental. He said that it almost should not be before the Board.

Mr. Levy said that the Petitioner can apply for a building permit and show that, based on Mr. Himmelberger's research, it is a buildable lot.

Mr. Redgate asked what month the building was demolished. Mr. Diamond said that it was taken down in December of 2019. He said that they had applied for a building permit before it was taken down. Mr. Himmelberger said that it is clear from the record that there was no intent to turn this into a park. Mr. Redgate asked if the building permit was denied based on the fact that it was an undersized lot. Mr. Diamond said that after they applied for the building, they were directed to come to the Zoning Board. He said that during the building permit process they had gone through review for Tree Preservation and Historical and got approvals. He said they showed a proposed plan with the new structure as part of the demolition permit.

Mr. Redgate said that this was an honest mistake. He said that not a lot of time transpired.

Mr. Becker said that Mr. Himmelberger's citing of Section 18A is persuasive but if the action before the Board is a special permit, it does not fit that language. He said that it may have to come before the Board as the result of an appeal of the Building Inspector.

Mr. Seegel discussed treating this as a clerical error by the Building Department that the Zoning Board is correcting. Mr. Levy said that Mr. Grant took the position that it was an error but he was not sure that he agreed with him.

Mr. Levy asked if there was anyone present at the public hearing who wished to speak to the petition. Mr. Himmelberger said that the neighbors were present at the previous hearing. He said that his client met with neighbors subsequently to address their concerns. He said that the revised plans took into account the neighbors' and the Board's concerns regarding the structure itself.

Mr. Levy said that he was troubled with making a finding. Mr. Becker suggested that Section 18A of the ZBL explicitly allows the construction of the dwelling in question. Mr. Levy said that the petition would then be moot and a building permit should be applied for. Mr. Diamond said that the Building Department

accepted the application for a building permit but would not proceed with it without Zoning Board approval to build on what was deemed to be a nonconforming lot.

Mr. Becker said that Board sees several petitions every year where a house is torn down on a nonconforming lot and a fully compliant house is built, which is what Section 18 allows to be done. Mr. Levy said that the Board would be doing this under a Section 6 Finding, not under the provision of the bylaw. Mr. Himmelberger said that the Board can find that it is a pre-existing nonconforming use in that there was a single family dwelling on a nonconforming lot. Mr. Levy said that they are not looking for relief for the use because it is in a residential district. Mr. Himmelberger said that you are not allowed to build a residential dwelling on a nonconforming lot. Mr. Levy said that is a dimensional requirement issue. Mr. Becker said that it would have been cleaner to have the building inspector deny the application and appeal that. Mr. Adams questioned whether the building inspector can take in an application without acting on it. Mr. Diamond said that when he applied for the building permit online, the building inspector responded that a special permit was needed to build on a nonconforming lot.

Mr. Adams said that having 5,000 square feet and 50 feet of frontage, you cannot be denied the right to build a house there. He said that Mr. Grant is saying that you need a special permit to demolish and rebuild on undersized lots. He said that a lot of the small lots have difficulty meeting all of the requirements.

Mr. Redgate said that he sees this as a clerical error.

Mr. Himmelberger read the communication between his client and the Building Department. Mr. Diamond said that they applied for the Demolition Permit and the Building Permit in tandem.

Mr. Adams said that the Board frequently allows a special permit to demolish a house and build a new one. He said that he can see the need to have a judicial board determine whether the new building will be substantially more detrimental, as guided by *Bjorklund v Norwell* and other case law. He said that the Petitioner supplied the demolition and building permit applications at the same time. He said that they did not have any reason to presume that once they were issued the Demolition Permit that they could proceed to demolish the building.

Mr. Becker discussed treating Mr. Grant's directive to come before the Board as a denial. Mr. Levy said that it has not been noticed or published and is not procedurally before the Board. He said that Mr. Himmelberger's argument is that they do not need a permit but they are asking the Board to issue one. Mr. Himmelberger said that his argument is that this is a lawful pre-existing nonconforming lot and the house was taken down without an intent to abandon of the ability to rebuild on the lot and that the Board can make a finding, based on what was submitted in terms of photographs and dimensioned elevations for the existing structure that was there before it came down, that what is proposed here is not substantially more detrimental than the pre-existing nonconforming structure. He said that the Board said at the last hearing that but for the fact that this had come down, this would have been a no-brainer. Mr. Levy said that there were issues with the abutters. He said that, based on the materials that were submitted, it is difficult for the Board to see how the structure sat on the lot. Mr. Diamond said that they submitted an existing plot plan.

Mr. Adams discussed the precedent of granting a special permit for a structure that has already been demolished.

Mr. Himmelberger asked that the Board note that there was no intention to abandon. He said that there is nothing that precludes the Board from making a Section 6 Finding. Mr. Levy said that tearing down is abandoning the structure. He said that they did not abandon the use as a single family home because that is a matter of right. Mr. Himmelberger said that the Board can exercise its judgement based on what was submitted with regard to the record of what was there before.

The Board discussed making a finding based on the materials that were submitted.

Mr. Himmelberger said that the ridge height is lower than what was there, as shown on the Existing Conditions Plan. Mr. Diamond said that there will be no dramatic change to grading. Mr. Levy said that the TLAG is under the threshold for Large House Review.

#### Planning Board

Mr. Adams moved, Mr. Redgate seconded the motion, and the Board voted unanimously to make a finding that the proposed new structure on a nonconforming lot will not be substantially more detrimental to the neighborhood than the recently structure that was demolished within a time frame sufficiently contemporaneous with the application for this Board to treat it as being existing, and make a finding that the revised plans are not substantially more detrimental than the recently demolished structured.

ZBA 2017-08, TRILLIUM DEVELOPMENT LLC, 7 BEMIS ROAD

ZBA 2017-10, NEA ZICHNI LLC, 870 WORCESTER STREET

ZBA 2017-46, PEET'S COFFE & TEA, 9 CENTRAL STREET

Mr. Becker said that the three dismissals without prejudice would be taken together. He said that all of them relate to issues that were resolved with the Building Inspector. He said that dismissing the petitions will resolve them to take them off of the books.

Mr. Seegel moved, Mr. Adams seconded the motion, and the Board voted unanimously to dismiss the petitions without prejudice.

ZBA 2020-12, PETER & ELIZABETH WELBURN, 20 CUSHING ROAD

Present at the public hearing was David Himmelberger, Esq., representing Peter and Elizabeth Welburn, the Petitioner. Mr. Himmelberger said that the request is to continue the petition to the April 2, 2020 public hearing. He said that in his recommendation, the Planning Director noted that town records show the lot at 5,310 square feet, whereas the Petitioner's plan shows it at 5,846 square feet, which is a substantial discrepancy. He said that he started to review and determined late this afternoon that a plan was recorded at the Registry of Deeds in 1971 that shows a 533 square foot wedge of land being removed from an abutter's property, with the subtraction of the square footage on the plan, and added to 20 Cushing Road. He said that when he went to the deed, it references the 533 square feet as an easement, not a conveyance in fee. He said that the conveyance also appeared at the Registry of Deeds on a quitclaim deed form conveying an easement. He said that it was so confusing that a confirmatory deed was recorded thereafter, albeit on a quitclaim form but calling out that what was being conveyed was an easement, not a conveyance in fee. He said that the plans that were submitted are inaccurate because they were based on the larger lot size.

Mr. Himmelberger said that he was contacted earlier in the week by the attorney for an abutter. He said that he called the attorney today to tell him that they would be seeking a continuance.

Mr. Seegel said that the smaller lot is better because of a lot coverage problem.

Mr. Adams moved, Mr. Seegel seconded the motion, and the Board voted unanimously to continue the petition to May 7, 2020.

2020-13 KRASSEN DRAGANOV, 148 WALNUT STREET

Present at the public hearing was David Himmelberger, Esq., representing Krassen Draganov, the Petitioner. He said that the request is for a special permit. He said that there was a misunderstanding on the Petitioner's part with regard to an abutter's concerns. He said that his client would like to address those concerns.

Mr. Himmelberger said that he was contacted by Counsel for an abutter regarding an issue that was still of concern. He said that he told Counsel that he had requested that the Board allow the petition to be continued.

Mr. Seegel moved, Mr. Adams seconded the motion, and the Board voted unanimously to continue the petition to May 7, 2020.

#### ZBA 2020-14, JANINE & DANIEL GUSTAFSON, 29 DAMIEN ROAD

Present at the hearing were David Himmelberger, Esq., Janine and Daniel Gustafson, the Petitioner.

Mr. Himmelberger said that the request is for a special permit and modification of an existing variance – to permit construction of second story addition to the garage and a two story addition to the rear of an existing nonconforming structure. He said that the garage was the subject of an earlier variance that was granted by one of the predecessor Boards. He said that the proposed addition will be fully compliant with dimensional setbacks. He said that the current house is nonconforming due to insufficient lot area of 14,250 square feet, with a right side setback at the garage of 10.8 feet, a left side setback of 12.7 feet.

Mr. Himmelberger said that the proposed new second story over the garage will be 20 feet 11 inches tall. He said that the rear addition will be the same height as the existing ridge line elevation. He said that existing lot coverage 14.3 percent or 2,045 square feet, will increase to 19.1 percent, or 2,720 square feet. He said that existing TLAG of 3,252 square feet will increase to 4,759 square feet.

Mr. Himmelberger said that the abutters to the garage side are supportive of the application.

Mr. Himmelberger said that the request is for two findings, one for modification of a variance that permitted construction of the garage and the other for a Section 6 Finding for a special permit for the rear addition that will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. He said that the variance that was granted allowed connection of the main home to the existing garage.

Mr. Himmelberger said that this will be a tasteful addition to a very gracious home in a nice neighborhood.

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

Mr. Becker read the Planning Board recommendation.

Mr. Adams asked if the plan had any provisions for containing water runoff. Mr. Gustafson said that they currently have a drywell on the left side of the house. Mr. Adams asked about the increase in impervious surface. Mr. Himmelberger said that lot coverage will increase by 675 square feet. Ms. Gustafson said that the area between the two back parts will be new and the rest will be above existing structure.

Mr. Adams confirmed that the lot is level. The Board discussed imposing a condition that there be no increase in water runoff.

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

floor over an existing garage. The Board made no new finding with respect to the variance as the Board adopts the finding for the original variance.

ZBA 2020-15, STEPHEN & MARYANNE ULIAN, 14 WINDSOR ROAD

Present at the public hearing were David Himmelberger, Esq., Lisa Abeles, Architect, Stephen and Maryanne Ulian, the Petitioner.

Mr. Himmelberger said that the request is to raze and replace a nonconforming garage and build a two story at the rear of the house, attached to a new 1.5 story garage with a nonconforming rear setback of 13.4 feet and a nonconforming side yard setback of 16.2 feet. He said that the pre-existing nonconforming garage has insufficient rear and side yard setbacks. He said that the proposed new second story addition will be added to an existing second story and will maintain the ridge height of 26 feet, while the ridge height of the main will remain unchanged at 30.5 feet. He said that the garage will have a height of 19 feet. He said that lot coverage will increase from 11 percent to 14.9 percent and exiting TLAG of 3,862 square feet will increase to 5,453 square feet in a 20,000 square foot district.

Mr. Seegel said that the only nonconformity is the garage to the rear and the proposal is to demolish it. He asked why the proposed garage would not be built in conformity. Ms. Lisa Abeles display oversized plans. She said that the existing garage is awkward. She said that the proposal is to put the family room where the garage is now and slide garage over to the driveway. Mr. Seegel asked about the size of the proposed family room. Ms. Abeles said that it will be 16 feet 11 inches by 16 feet 5 inches.

Mr. Becker said that the proposal is to take a conforming house and making it nonconforming and creating a new nonconformance at the right side lot line. He questioned why this was not a variance request. Mr. Himmelberger said that the Petitioner is seeking a determination that, under the Bellalta Case which allows for increasing an existing nonconformity, to also allow for the creation of the two additional nonconformities. Mr. Becker said that Deadrick and another case treat new nonconformances and conclude that a new nonconformance needs a variance. He said that Bellalta really dealt with the exacerbation of an existing nonconformity.

Mr. Adams agreed that the new setback of 16.2 feet should require a variance. He said that everything could be pushed over. Ms. Abeles asked if moving the addition over four feet to the left will be acceptable. Mr. Seegel said that he still has an issue with taking down the free standing nonconforming garage. He said that normally if a nonconforming structure is taken down, what is built is conforming. He said that the rear yard nonconformity will remain and they will be creating a new nonconformity in the right side yard. Ms. Abeles said that the family room will take the place of the garage. Mr. Seegel said that they will be taking the garage down. Ms. Abeles said that the garage will be easier to get to and they can fit a family room in. She said that it is set back from the street and the abutters on both sides support the project. Mr. Adams said that the Petitioner needs to come up with a basis for the design that is not just because it is what they wanted. Ms. Abeles said that they cannot fit two cars into the existing garage. She said that they did not move the structure closer to the rear where it abuts Centennial Park. Mr. Seegel said that they will not be improving any situation. He said that there is plenty of room to slide the whole thing over to where the proposed terrace will be and slide it forward. Ms. Abeles said that if they slide the family room over to where the proposed terrace is, they will have to go through the garage to get to the kitchen from the family room. She asked about pulling the garage over four feet to conform on the side and pulling the family room in to conform to the rear lot line setback. She said that pulling the garage forward would not work. Mr. Becker said that it will start and end with a nonconforming rear yard setback of 13.4 feet. Ms. Abeles said that they are asking to keep the garage at the same distance from the rear property line and not add anymore nonconformities. She questioned how that would be substantially more detrimental to the neighborhood if the neighbors do not object and at the end of the project, the rear yard setback has not changed.

Mr. Seegel asked if the kitchen is going in the proposed new addition at the back of the house. He asked what is existing there now. Ms. Abeles said that the existing sunroom will be demolished. She discussed the existing and proposed floor plans.

Mr. Becker said that not being detrimental to the neighborhood is broader than simply what the nonconformance is.

Mr. Adams said that one of the problems with not having a separate existing conditions plot plan is that you lose insight into the fact that by connecting to where the garage is, they are substantially increasing the bulk of the building. Ms. Abeles said that the perception from the street would not be significant. She said that it is very far back on the property. She said that it is a very deep lot and there is a long driveway.

Mr. Becker said that moving into the side yard setback needs a variance, not a special permit. He said that the garage is the east/west direction, prior to the proposal, was conforming. He said that it will be 16.2 feet instead of 20 feet. Ms. Abeles confirmed that pulling the garage to be conforming on the side will not require a variance. Mr. Becker said that the question is then whether the proposal before the Board will be substantially more detrimental to the neighborhood than the existing structure. He said that there are impacts in that. He said that the proposal is to join everything at the back to the house. He said that a conforming structure will now be made nonconforming without doing anything to the house. He said that the implications of that is that future additions may require a special permit. Ms. Abeles said that the Ulians plan to live in the house for a long time. She said that the hope was, with this project, the house will be done.

Mr. Seegel said that TLAG will be increased by 41 percent. He said that they will be adding a second floor where the sunroom was. He said that this house should really go through Large House Review (LHR). He said that the fact that the small nonconformity at the rear takes this out of LHR is of concern. He said that he would expect that every requirement of LHR be satisfied. He said that Board would need to look at drainage, lighting, trees, etc. He said that he feels strongly about the fact that when there is a conforming lot and a basic house that conforms, to do the size of addition that is proposed is beyond ZBA expertise. He said that if the Planning Board is not reviewed this under LHR, he would require that a complete LHR package be submitted to ZBA so that it can look at it properly. He said that they are taking advantage of a small nonconformity to make the house half again as large. Mr. Himmelberger said that the property is located in a 20,000 square foot district where the threshold for LHR is 5,900 square feet. He said that this would be under the threshold at 5,453 square feet.

Mr. Becker said that it looks like they are trying to take advantage of an existing nonconformity in ways that were not intended to work. He said that he was troubled by the variance request. Mr. Ulian said that the existing garage is nonconforming. He said that it is only good for one and a half cars and is falling down. He said that the motivation is not for a mc mansion. He said that the design that they put forward is not about being bigger but is to keep the look and feel of the house. He said that the issue that they had was, in order to get a two car garage, pulling it forward was not attractive. He said that maintaining the rear yard setback would keep the garage far back from the street. He said that intention was to get a two car garage, a mudroom and a workable kitchen. Ms. Abeles said that her clients were concerned about not ruining the period look of the house.

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

Mr. Becker read the Planning Board recommendation.

Mr. Seegel said that he is troubled by the concept of taking down the garage and rebuilding that close to the rear lot line, even though it is park land. He said that there is no basis for granting a variance.

Mr. Adams confirm that there is no second floor to the garage other than attic space. Mr. Ulian said that you have to use a ladder to get up to the attic space.

Mr. Himmelberger requested that the Board grant a continuance to the May 7, 2020 public hearing.

Mr. Seegel asked that the Petitioner give consideration to the rear lot line when they revise the plans.

Mr. Seegel moved, Mr. Becker seconded the motion, and the Board voted unanimously to continue the petition to May 7, 2020.

#### ZBA 2020-16 BENJAMIN & SHEA ASFAW, 57 MAYO ROAD

Present at the public hearing were Mike Lynch, Contractor, Richard Curl, Architect, and Shea Asfaw, the Petitioner.

Mr. Lynch said that the request is for a special permit/finding to construct a single story addition on a pre-existing nonconforming structure. He said that the house is conforming in all aspects except where the left side encroaches 3.5 inches into the setback. He said that the proposed addition will conform to all setback requirements.

Mr. Becker commended the Petitioner for including the drywell on the plot plan because it helps the Board to see how runoff will be handled in the Water Supply Protection District. Mr. Seegel commended the Petitioner for including the proposed air conditioning units on the plot plan.

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

Mr. Becker read the Planning Board recommendation.

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

#### 2020-17 RALPH & CAROLINE LADD, 54 PROSPECT STREET

Present at the public hearing was Nick Baldasarre, Architect, who said that he was representing Peter Chung, the prospective buyer of 54 Prospect Street. He said that the request is for a special permit for an existing structure on a nonconforming lot. He said that they will demolish the existing structure and construct a new home. He said that the existing home has a nonconforming right side yard setback. He said that proposed structure will meet all setback requirements.

Mr. Baldasarre said that impervious will be decreased. He said that the two existing driveways will be reduced to one. He said that the concrete sidewalk will also be reduced.

Mr. Baldasarre said that square footage of the structure will increase substantially. He said that the neighboring structures support the plans. He said that letters of support were submitted. He said that the existing home does not match neighborhood and the proposed home will closer match what is in the neighborhood.

Mr. Seegel said that it is a good solution.

Mr. Becker discussed the nonconformities. He said that the distance to the garage is 25.7 feet, where 30 feet is required for a side entry garage. He said that the proposed entry porch is 75 square feet, which does not

meet the exemption of 50 square feet in the definition of front yard. He said that the Zoning Review lists a Porch Projection Maximum at 5 feet. He said that the 5 feet that is described in the front yard exemption is not a requirement of the bylaw. He said that you measure the front yard depth to a porch that is greater than 50 square feet, from the front lot line to the structure that is larger than 50 square feet. He said that the porch can be made smaller or the building can be slid back to meet the bylaw.

Mr. Seegel said that he would not have any objection to granting a variance based on the shape of the lot and topography. He said that the petition would have to be re-advertised. The Board discussed State Case Law, *Bellalta v Brookline*. Mr. Becker said that the existing side facing garage is 24 feet from the side lot line and the proposed side facing garage will be 25.7 feet, which decreases the nonconformity.

Mr. Baldassarre confirmed that the front porch will have to be pulled back five feet. Mr. Becker said that if the front porch is 50 square feet or smaller, the front setback is measured from the front property line to the front of the house. He said that if the porch is greater than 50 square feet, the front yard setback is measured to the front of the porch.

The Board discussed imposing a condition that the front porch shall be 50 square feet or smaller or the building is moved back to meet the setback requirements.

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

Mr. Becker read the Planning Board recommendation.

Mr. Adams said that the property behind goes to an office building.

Mr. Seegel moved, Mr. Adams seconded the motion, and the Board voted unanimously to approve a special permit to demolish the existing structure and build a new structure with the setbacks as shown on a Plot Plan dated January 24, 2020, subject to conditions that the proposed entryway be reduced to 50 square feet or the entire structure is moved back to meet the 30 foot front setback requirement, and a new plan shall be submitted prior to applying for a building permit.

#### ZBA 2020-18, CHARLES & JANE ELLIS, 73 WHITTIER ROAD

Present at the public hearing were Charles and Jane Ellis, the Petitioner, and Daniel Trainque, Contractor.

Ms. Ellis said that the request is for a variance for a deck for their backyard. She said that the side yard setback will be 11.4 feet, to have the edge of the deck be in line with the conforming edge of the pool. She said that there will be a storage shed on the deck with a ridge line of 10 feet. She said that the neighbors on each side are in support, as are all of the surrounding neighbors. She said that the deck and the shed will have a total lot coverage of 658 square feet, for total lot coverage of 17.4 percent, which is well under the limit of 20 percent. She said that the hardship is due to the topography of the lot, which drops almost 20 feet from the edge of the pool to where the edge of the deck would be.

Mr. Adams asked what will happen underneath the deck. He asked how high it will be above grade at its worst case. Mr. Trainque said that it will be eight to ten feet above grade.

Mr. Becker said that the basis for the request is topography. He said that the topography drops in an east/west direction but the relief asked for is north/south. He said that the proposed storage shed is approximately 120 square feet, which is an accessory structure that is not allowed in the setback. He said that the Petitioner is actually asking for two variances, not one. He asked why the setback of the deck is requested to be 11.4 feet. Ms. Ellis said that the edge of the deck is in line with the edge of the pool. She said that the drop off starts at the edge of the pool. She said that if they were to slide the deck north/south, it

would still drop off east/west. She said that they would have a drop as soon as they got out of the pool, which would be dangerous. She said that if the lot was flat, they could build a patio.

Mr. Adams asked if they filled to build the pool. Ms. Ellis said that they did not because that part of the lot is relatively flat. Mr. Adams asked why these issues were not considered before building the pool. Mr. Ellis said that the pool company did not account for the setback. He said that it was an oversight.

Mr. Adams said that he was troubled with the side view of the underside of the deck. Mr. Trainque said that will sheath it with fencing.

Mr. Seegel said that the Board will need to see an engineered plan for the deck and architectural views to see exactly what it will look like and make sure that it will be safe.

Mr. Becker said that it is not clear how the whole thing works. Mr. Ellis said that there will be a fence around the pool. Mr. Seegel said that the fence is shown around the perimeter of the property. He said that there is nothing protecting the left side of the pool. Mr. Becker said that the Petitioner is arguing for the deck for safety reasons but around the corner from the deck they will have the same issue. Ms. Ellis said that area is flat. Mr. Becker said that the Board cannot tell what the Petitioner plans to do from the plans that were submitted. Mr. Seegel said that the Board will not grant a variance for something that it does not understand.

Mr. Seegel said that the Board will need to see a topographic plan around the rear and side of the house. He said that the Board will need to see a civil or structural engineer's specifications for a deck that is that high off of the ground. Mr. Becker said that the Board is trying to understand what the proposal really is. Mr. Ellis said that it will be a deck off of the back of the pool. He said that because of the drop off, a patio would require a significant retaining wall. He said that in terms of what the neighbor's view, looking at lattice is preferable to a stone wall.

Mr. Seegel said that he is concerned that this is sort of a self-created problem. Mr. Ellis said that this was a mistake made by the pool company when they filed for the permit. He said that they did not know about the setback. He said that the plans that were started in January, 2019, always had a deck. Ms. Ellis said that when they started the plans last year, the end goal was to have the area ready for their daughter's graduation in June of 2020. Mr. Seegel said that they chose to put the pool in without finding out about zoning bylaw requirements. Mr. Ellis said that they trusted Environmental Pools, who have built a number of pools in Wellesley.

Mr. Becker asked about drainage from the shower. Mr. Trainque said that it will tie into existing plumbing. Mr. Becker asked if there will be any electrical or water services inside the shed. Ms. Ellis said that there will be no water service.

Mr. Adams said that the shed may be better under the deck with a set of stairs down to it. Ms. Ellis said that they thought it would be safer to have it above rather than crawling under. Mr. Becker said that because the shed is over 100 square feet, it is an accessory structure that should not be located in the setback, whereas, if it was less than 100 square feet, it would not be an issue. Ms. Ellis said that the shed can easily be moved. Mr. Seegel said that is why the Board needs to see proper documentation. He read the Planning Board recommendation.

Mr. Adams asked about plans for the grill. Mr. Ellis said that it will be a natural gas fired grill. Mr. Adams said that the Fire Department may have an issue with that on a wooden deck. Ms. Ellis said that they had discussed having a composite deck and they had discussed using a propane tank rather than hard piped. Mr. Seegel said that those issues need to be clarified.

Mr. Adams asked about what was identified on the plot plan as pool equipment at the front left corner of the house just inside the fence. Mr. Ellis said that is the equipment to run the pool. He said that it will be screened.

Mr. Adams moved, Mr. Seegel seconded the motion, and the Board voted unanimously to continue to continue the petition to May 7, 2020. Mr. Becker said that, in addition to the plans discussed at the hearing, it will be important to see the vertical dimensions of all structures for the Board to get an understanding of the implications.

As there was no further business to come before the Board, the hearing was adjourned at 10:32 pm.

Respectfully submitted,

Lenore R. Mahoney  
Executive Secretary

DRAFT