

**ZONING BOARD OF APPEALS**

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TELEPHONE  
(781) 431-1019 EXT. 2208

WALTER B. ADAMS  
DEREK B. REDGATE  
RICHARD L. SEEGEL

August 13, 2020  
7:30 pm  
Remote Public Hearing

Zoning Board of Appeals Members Present: J. Randolph Becker  
Robert W. Levy  
Derek B. Redgate

Mr. Becker discussed the new format of the remote public hearing, problems with remote public hearing formats in the past, agenda for public meeting and public hearing, public participation and protocol for speaking, and public hearing process.

**BUSINESS MEETING**

ZBA 2019-59, TOWN OF WELLESLEY/NATURAL RESOURCES COMMISSION, 438 WASHINGTON STREET (HUNNEWELL FIELD)

Present on behalf of the Town of Wellesley were Dave Hickey and George Saraceno, Engineering Division.

Mr. Becker said that the matter before the Board was a request from the Department of Public Works (DPW) regarding the softball field project and a proposed change to the roof type. He said that DPW suggested that was a minor change that did not require a public hearing.

Mr. Levy said that there was a request today from Natural Resources Commission (NRC) to continue the matter. Mr. Becker said that he spoke with the NRC Director about the nature of the request before the Board tonight. He said that the question before the Board is if it is a material change that requires a public hearing. Mr. Levy said that if they will be coming back before the Board with other minor modifications, it may be more efficient to hear all of them at the same time.

Mr. Hickey said that DPW has been allocated oversight over the construction project. He said that the request is coming in two pieces because there are two unrelated issues. He said that the contractor worked with DPW to present a change to keep the project on budget and on schedule, and they discussed that with the NRC. He said that proposed change is what is before the Board tonight and is for a roof change to a Cape

Cod salt box style, similar to what is a Lee Field and Reidy Field. He said that when they asked the Board about making a similar change at Lee Field, it was considered to be a minor change.

Mr. Hickey said that after speaking with the NRC and after they sent the letter of request to the Board, a generous contributor to the project came forward to make further changes. He said that he was not sure if that will be supported by the NRC. He said that his obligation is to the contractor to keep the project on budget and on schedule. He said that the question before the Board is whether the change to the roof to be a little more consistent with what is out in the general complex and similar to what they did at Lee Field is a minor modification. He said the Board's decision will allow DPW to move forward with the project, regardless of what comes out of further discussions with the NRC.

Mr. Redgate confirmed that the proposed change is for the roof at Hunnewell Field, which is between Lee and Reidy Fields. He asked if Lee Field was complete. Mr. Hickey said that DPW included some pictures of the Lee Field dugouts, as constructed. He said that the request is to build the same roof at Hunnewell Field. He said that the rest of the building is slightly different. Mr. Redgate said that when the Board originally permitted the project, a lot of the neighbors' concerns were about Lee Field, which is much closer to the neighbors.

Mr. Levy confirmed that, other than the roof, the dimensions are all the same.

Mr. Levy moved that the Board make a finding that this is a minor modification. He moved that the Board approve the minor modification. Mr. Redgate seconded the motions. The Board voted unanimously the motions.

Mr. Redgate voted aye, aye.

Mr. Levy voted aye, aye.

Mr. Becker voted aye, aye.

#### PUBLIC HEARING

#### ZBA 2020-29, DENISE CANZANO, 139 OVERBROOK DRIVE

Present at the hearing was David Himmelberger, Esq., who said that his client initially proposed to make an addition to an existing nonconforming structure and has decided that he would prefer to raze and rebuild a nonconforming structure instead, which will require a special permit. He said that the question is whether the Board will allow matter to be continued to a future hearing and substitute in the new plans, as opposed to having to formally withdraw and re-submit. He said that the deadline to submit for the September hearing has gone by.

Mr. Levy said that his concern is that appropriate notice is given to the abutters, as well as publication. He said that normally it is not republished and abutters are not notified when a hearing is continued. He said that abutters saw what was originally a renovation and that has now morphed into a teardown. He said that it is prudent to let everyone know what is going on with a new notice. He questioned whether that entails a new application.

Mr. Becker said that the originally scheduled public hearing for September has not been noticed. He said that this petition could move to the end of the queue. Mr. Levy said that as long as the abutters are notified

that this will now be a teardown instead of a renovation, and they have time to review the plans, he had no objection to keeping it under the same docket number and just charge for mailing and publication fees. He said that because the hearing was not opened, the panel does not have to be the same.

Mr. Levy moved, Mr. Redgate seconded the motion, and the Board voted unanimously to approve re-noticing the petition for a continued public hearing.

Mr. Redgate voted aye.

Mr. Levy voted aye.

Mr. Becker voted aye.

#### ZBA 2020-30, KATHLEEN KELLEY, 8 BROOKFIELD ROAD

Present at the public hearing was Laurence Shind, Esq., representing the Applicant, and Steven Meyers, Architect

Mr. Shind said that the request is for approval to build a two story addition to the left side of the home. He said that the addition will contain a master suite on the second floor, and a sun room and an office on the first floor. He said that the existing three season room will be removed and incorporated into the addition.

Mr. Shind said that the lot is undersized at 9,000 square feet in a 10,000 square foot district. He said that there is an existing nonconforming garage on the right side of the house. He said that the proposed addition will comply with all dimensional setback rules. He said that TLAG of the existing house is approximately 2,800 square feet and proposed finished TLAG will be 3,500 square feet, which is under the 3,600 square foot threshold for the district. He said that existing lot coverage is 16.5 percent and proposed lot coverage is just under 22 percent, which is below the 25 percent maximum. He said that they tried to fit the design in with the existing house and the neighborhood, which is a mix of colonials and capes. He said that they shared the plans with the immediate neighbors and are not aware of any objections. He said that the neighbor on the left side who will be closest to the proposed addition has expressed their approval of the plans.

Mr. Levy said that the Board received a number of emails from neighbors expressing unanimous support of the project.

Mr. Levy asked if the shed in the back corner will remain. Ms. Kelley said that was just replaced and the plan is to keep it. She said that it is under 100 square feet.

Mr. Redgate discussed inserting a condition that the plot plan be updated to include the zoning district and a dimensional table for the SR10 District, so that the Board can clearly see that the left side will comply.

Mr. Becker asked if any member of the public wished to speak to the petition.

Mr. Becker read the Planning Board recommendation.

Mr. Becker said that the addition does not overwhelm the house and the TLAG is below the trigger for Large House Review. He said that the house is a little bigger than average but not the usual three times as large as what was there before that the Board typically sees.

Mr. Levy said that the Planning Board noted that the project is still subject to review by the Historical Commission. Mr. Meyers said that he will include the calculation of demolition.

Mr. Levy moved, Mr. Redgate seconded the motion, and the Board voted unanimously to allow the special permit, as applied for and make a finding that the proposed structure shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, subject to a condition that a revised plot plan be submitted that shows the zoning district and a dimensional table for the district in which the property is located.

Mr. Redgate voted aye.

Mr. Levy voted aye.

Mr. Becker voted aye.

#### ZBA 2020-31, UNITARIAN SOCIETY OF WELLESLEY, 309 WASHINGTON STREET

Present at the public hearing was Karen Mariscal, who said that she was before the Board just over a year ago to approve the use of the Unitarian Church's parking lot at 309 Washington Street to make some revenue. She said that the lot sits empty and they thought that it would help the town to provide more parking. She said that the Boxcar Company is partnering with the Church as an app to reserve parking spaces. She said that they requested the use for 35 spaces last year, not all of which are for Boxcar. She said that some of the spaces are for Green's Hardware. She said that they tried it for a year and it went well and did not disrupt the neighborhood. She said that they never filled all 20 spaces for Boxcar. She said that with Covid there is a diminished number but they still want to keep the program. She asked if the renewal could be for five years instead of one year. Mr. Becker said that the longest period that the Board has granted is for three years.

Mr. Becker said that this is a use permit. He asked how the increase of 35 cars affects vehicle circulation in the lot, queuing in the lot and queuing at the driveways. Ms. Mariscal said that there have been no problems, even with the pre-school. She said that they already had 10 spaces for Green's and they never used all 25 for Boxcar. She said that people come at different times and it is clearly marked. Mr. Becker asked if there were any issues with the pre-school and pedestrian safety. Ms. Mariscal said that there have been no problems with that.

Mr. Levy said that the original decision seemed to be for the use of Boxcar and the fact that Green's is using some of the spaces is the first that he has heard of it. He said that he drove yesterday and counted 16 stenciled spaces. Ms. Mariscal said that there are 59 total and 20 stenciled. She said that 12 are accessory for staff and pre-school staff and the rest are for use. Mr. Levy said that the original permit seemed to be for Boxcar. Ms. Mariscal said that the request is for non-accessory parking. Mr. Levy confirmed that the spaces used by Green's are not marked. Ms. Mariscal said that they tell them where to park, against the wall behind the building. Mr. Levy questioned whether the Board needs to designate where the spaces are.

Mr. Becker said that he sat on this request at least three times. He said that originally the special permit was for parking in general with no assigned spaces. He said that with the increase to 35, the issue is the impact to traffic and pedestrian safety.

Mr. Redgate said that there has always been renewal for 15 spaces. He said that it was bumped up a year ago to accommodate Boxcar and that was why it was a one year renewal. He asked if the Boxcar rentals are out

by 9 pm and if they can rent on Saturdays or Sundays. Ms. Mariscal said that they cannot rent on Saturday or Sunday. She said that she has never seen a car there after 9 pm and has not heard of a problem.

Mr. Becker asked if any member of the public wished to speak to the petition.

Mr. Becker read the Planning Board recommendation.

Mr. Becker suggested going back to a two year renewal.

Mr. Levy moved, Mr. Redgate seconded the motion, and the Board voted unanimously to allow renewal of the special permit subject to the same conditions except for expiration in two years rather than one year.

Mr. Redgate voted aye.

Mr. Levy voted aye.

Mr. Becker voted aye.

#### ZBA 2020-33, BIKE REALTY, LLC, 951 WORCESTER STREET

Present at the public hearing was Joe Murray, representing Bike Realty, LLC. He said that he has come before the Board every three years to renew the drive-thru special permit for 951 Worcester Street. He said that their company also operates the Dunkin Donuts there. He asked that the special permit be renewed for three more years.

The Board discussed prior issues with traffic and menu restrictions. Mr. Murray said that when they rebuilt the property they were able to reconfigure the drive-thru and that allowed them to go back to a full menu. He reviewed the history of the site.

Mr. Levy asked if there have been any issues with traffic backing up onto Route 9. Mr. Murray said that there have been no problems since they were able to wrap the cars around the back of the building.

Mr. Becker said that the previous decision is down to one condition for expiration in three years.

Mr. Becker asked if any member of the public wished to speak to the petition.

Mr. Becker read the Planning Board recommendation.

Mr. Redgate moved, Mr. Levy seconded the motion, and the Board voted unanimously to approve renewal of the special permit, subject to the same condition.

Mr. Redgate voted aye.

Mr. Levy voted aye.

Mr. Becker voted aye.

#### ZBA 2020-35, BANK OF AMERICA, 342 WASHINGTON ST

Present at the public hearing were Kristine Hung, Esq., representing Bank of America (BOA), and Maryellen McCarthy, Philadelphia Sign. Ms. Hung said that the request is for a special permit for a sign at 342 Washington Street, which is at the corner of Abbott Road and Washington Street, in a Business District. She

said that BOA recently updated their corporate logo and over the past year have been replacing signs nationally to reflect the updated logo. She said that the request is to replace the existing free standing sign with a new free standing sign of the same size and location on an existing stone pedestal. She said that the proposed sign is double faced, three feet in height by six feet in width, for 18 square feet per side. She said that because it is a double sided sign, it will exceed the 25 square feet that is allowed by right. She said that the sign is within the 15 foot setback, 12.4 feet to Abbott Road and 9.2 feet to Washington Street. She said that the double sided sign and the location of the sign is appropriate because the building is set back from street and the sign needs to be big enough and in that location so that vehicles driving by from both directions on Washington Street have enough time to see the sign and give them sufficient time to react to turn into the property. She said that the proposed sign will have the same dimensions and location as the existing sign and the only change will be the corporate logo.

Mr. Levy confirmed that the existing sign is two sided.

Mr. Levy said that no plot plan was submitted. Ms. Hung said that the aerial photograph that was submitted shows the dimensions. Mr. Becker said that they are replacing in kind the sign that is there.

Mr. Levy said that the Design Review Board (DRB) asked that the relative scale of the logo to lettering be reconsidered. Ms. Hung said that BOA said that the logo is smaller than what they normally have. Mr. Levy said that the Planning Board said that the sign is quite bright, distracting, and out of character with site and the neighborhood. He said that the Planning Board recommended that the special permit be denied.

Mr. Becker asked about the background color of the existing sign. Ms. McCarthy said that the existing sign has a gray background. She said that the background of the new sign appears white in the rendering but it is Garbo Silver and is not as bright as the rendering. She said that they just installed a sign at 185 Linden Street in Wellesley that has the same Garbo Silver.

Mr. Levy said that the end cap appears to be red in the rendering. Ms. McCarthy said that the back of the sign is red and will be visible from Washington Street. She said that there is no end cap. She said that it is a two sided sign with an indented center that is approximately one third of the depth into the sign on both sides. Mr. Levy asked if the red inset is part of the sign program. Ms. McCarthy said that the red insert is part of the design for the program. Mr. Levy asked about illumination. Ms. Hung said that a spotlight shines up.

Mr. Levy asked if there was a permit for the existing sign.

Ms. McCarthy displayed a picture of the existing wall sign at 185 Linden Street. She said that it has a red panel behind the Silver Garbo panel.

Mr. Becker discussed the six required findings under the Zoning Bylaw that the Board must consider in granting a special permit for a sign. He discussed the Planning Board recommendation. Ms. McCarthy said that they would have to discuss an alternative background color of the sign at this location with the Bank.

Mr. Levy said that he would prefer to view the Linden Street sign on site. He said that he would like to see the prior special permit. Ms. Mahoney read an excerpt from ZBA 2000-81 for a special permit granted to Fleet Bank for an internally illuminated, two sided standing sign with less than required setbacks. Mr. Levy said that the current sign is not internally illuminated, so it changed at some point.

Mr. Levy discussed continuing the hearing so that the Applicant could take the Planning Board recommendation into account and the Board would have a chance to view the Linden Street sign. Mr. Redgate said that he considered this to be a replacement in kind but would like to look at the Linden Street sign to get perspective. He said that he would not want to see BOA having a different logo in Wellesley than what is in every other location in the United States. Mr. Becker said that the sign has been in that location for many years so this should not be considered to be a new sign.

Mr. Becker read Section 22A H.3 of the Zoning Bylaw.

Mr. Levy said that if the Board was inclined to grant the petition, it may want to consider a condition for the timing of the lights. He said that shutting the lights off by 9 pm is typical. Mr. Redgate asked if the drive thru at the back operates for 24 hours. Ms. McCarthy said that it is a 24 hour ATM. Mr. Becker said that there is also an ATM inside the door. Mr. Redgate said that there are no residences there. He suggested that the lights be turned off by 10 pm.

Mr. Levy moved, Mr. Redgate seconded the motion to approve a special permit, subject to a condition that the lights be turned off no later than 10 pm.

Mr. Becker asked if there was any member of the public who wished to speak to the petition.

The Board voted unanimously to approve the special permit, subject to a condition.

Mr. Redgate voted aye.

Mr. Levy voted aye.

Mr. Becker voted aye.

ZBA 2020-37, ROBERT & JENNIFER BORTNICK, 9 LEEWOOD ROAD

Present at the public hearing was David Himmelberger, Esq., representing Robert and Jennifer Bortnick. He said that the request is for a special permit to enclose a pre-existing 26 square foot nonconforming porch that is located in the side yard setback at 12.26 feet. He said that under the Bjorklund Decision, the proposed enclosure may not be found to constitute an intensification of an existing nonconformity, and that as a matter of law, a special permit should issue. He said that the neighbor to the right is in favor. He said that what had been an active use entrance with two lights will be changed. He said that the stairs and lights will be removed and the porch will be enclosed and made into a powder room, which will be a less intense use in the nonconforming setback. He requested that the Board grant the special permit.

Mr. Levy said that Mr. Himmelberger's letter says that the Applicant is entitled to a special permit and a building permit as a matter of right. Mr. Himmelberger said that he submitted a request for zoning interpretation to Mr. Grant and it was Mr. Grant's response that, while Bjorklund might be controlling, the fact that the enclosure, which is in the setback, required the Board to grant a special permit. He said that based on that response, he submitted the request for a special permit.

Mr. Levy said that there are typically two findings under Section 6 of Chapter 40A, M.G.L. He asked Mr. Himmelberger if the Board does not have to go past the first finding. Mr. Himmelberger said that because it is a nonconforming structure, the Board has to make a determination as to whether there is any intensification of the existing nonconformity. He said that if there is not, a permit should be granted. He said that under Bjorklund, this is not an intensification. He said that it is a change to a pre-existing

nonconforming structure but under Wellesley's Zoning Bylaw and Chapter 40A, Section 6, when you go through the process of examining the change that is being sought, the Board should conclude that there is no intensification of the pre-existing nonconformity, and therefore a special permit should be granted. Mr. Levy asked if Mr. Himmelberger would prefer that that Board make an additional finding whether the proposed structure will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. Mr. Himmelberger said that he did not believe that the Board has to go there. He read an excerpt from Chapter 40A, Section 6. He said that he was satisfied if the Board wished to base its ruling on the fact that under Bjorklund there is no intensification of the pre-existing nonconformity and, therefore, a special permit issues. He said that he is equally satisfied if the Board wanted to get to the not substantially more detrimental finding because under that analysis it is clearly not substantially more detrimental to the neighborhood than the pre-existing nonconformity because an active use porch is being converted to an enclosed powder room.

Mr. Himmelberger said that in the last paragraph of Mr. Grant's letter, he talks about being subject to appropriate review by the Zoning Board of Appeals, consistent with Section 17 of the Zoning Bylaw. He said that the proposed enclosure of the porch is likely entitled to a building permit without the further finding that it is not more detrimental to the surrounding neighborhood than the existing structure. He said that Mr. Grant agrees with Mr. Levy that the Board does not need to make a finding in this case but it is Mr. Grant's position that because it is within the nonconforming setback, it does require a Board action. Mr. Grant said that if the Board was located on the other side of the house where it was not within a nonconforming setback, he would have issued a building permit.

Mr. Becker said that since the porch was already the subject of a special permit, there is a nonconformity but there is no change, no intensification or addition to the nonconformity, which satisfies the first clause of Section 16 of Chapter 40A and Section 17 of the Zoning Bylaw.

He Board discussed the Planning Board recommendation. Mr. Becker read the Planning Board recommendation.

Mr. Becker asked if there was any member of the public who wished to speak to the petition.

Mr. Levy moved, Mr. Redgate seconded the motion, and the Board voted unanimously to find that the proposed structure does not increase the nonconforming nature of the structure and accordingly a special permit should issue.

Mr. Redgate voted aye.

Mr. Levy voted aye.

Mr. Becker voted aye.

#### ZBA 2020-38, NEEDHAM BANK, 458 WASHINGTON STREET

Present at the public hearing was Jay Johnson, Facilities Director, Needham Bank.

Mr. Levy said that he drove by the property yesterday and saw that all of the conditions of the prior permit have been met. Mr. Johnson said that all of the lines and arrows were repainted. He said that there is a sign that prevents people from coming from State Street from going through the drive-thru the wrong way. He said that there are plans in next year's budget to replace the site signage.

Mr. Becker asked if there was any member of the public who wished to speak to the petition.

Mr. Becker read the Planning Board recommendation.

Mr. Levy moved, Mr. Redgate seconded the motion, and the Board voted unanimously to approve renewal of the special permit, subject to the same conditions.

Mr. Levy voted aye

Mr. Redgate voted aye.

Mr. Becker voted aye.

#### ZBA 2020-39, DANIEL & CAROLINE TARRANT, 6 CAVANAGH ROAD

Present at the public hearing were David Sharff, Architect, Daniel and Caroline Tarrant. Mr. Sharff said that request is to build a two story addition on an 8,300 square foot lot in a district where 10,000 square feet is required. He said that the setbacks are met except for the side where the existing house is 16 feet from side line where 20 feet is required. He said that ten feet of the proposed addition will be four inches beyond that to hold the side structure of the house so that it is one continuous addition along the side. He said that it will step back in the rear to integrate a porch. He said that lot coverage is well within the maximum and a TLAG of 2,697 square feet is well below the 3,600 square feet that is allowed. He said that the house was constructed off center on the lot. He said that he and his clients tried to do the best that they could with a small house on a small lot to give them more space for a larger family room on the first floor and a fourth bedroom on the second floor.

Mr. Levy asked about the size of the shed and if the intention is to keep it. Mr. Sharff said that the intention is to remove it and put up a conforming shed that is less than 100 square feet. He said that the existing shed is approximately 10 by 12 feet and previously served as a garage. Mr. Levy asked if there was any objection to removing the shed. He said that it is nonconforming because it exceeds the size that is allowed as a matter of right. He said that the Board typically wants to see properties as conforming as possible. He said that his understanding is that the intent is to remove the shed anyways. Mr. Tarrant said that they had not talked about doing everything all at once. He said that it is something that they may want to do afterward but it was not part of their initial plan. Mr. Becker said that one part is the removal of the nonconforming shed and the second part is to reinstall a conforming shed. He said that does not mean that the conforming shed has to be installed immediately after taking down the nonconforming shed. Mr. Levy said that the new shed will not require Zoning Board approval. Mr. Tarrant said that it is storage that they need and want. He asked about timing. Mr. Levy said that if the Board imposes a condition that the shed has to be removed, a Certificate of Occupancy (C of O) will not issue until that happens. He said that there is an opportunity to remove a nonconforming shed, which is something that the Board would like to see. He said that decision will not otherwise interfere with the request that is before the Board. Mr. Tarrant said that they had discussed removing the shed but had not anticipated removing immediately. Mr. Levy said that removal could be at the end of the project before applying for the C of O.

Mr. Redgate asked if the intent is to take down the one story at the back and then build a new two story that extends beyond the existing structure. Mr. Sharff said that the intent is to add onto the existing one story on the first floor and build over both the one story and out the back over the addition. Mr. Redgate confirmed that the addition extends further into the back of the lot than the existing one story. Mr. Sharff said that it will extend 10 feet for two stories. Mr. Redgate said that the current side yard setback is 16 feet and the request is for relief to change to 15.9 feet. He said that the gutter line will be at 14.9 feet. He said that the

dimensions of 16.5 and 16 feet are to siding, as is the 15.9 feet. Mr. Redgate questioned whether this would be a variance if it encroaches more than the existing nonconformity. Mr. Levy said that if there is already an existing nonconformity, this would not create a new nonconformity, under the Brookline case. He said that he believes that the Board can approve a special permit without a variance. He said that prior to that case, the distance could have been considered to be de minimus.

Mr. Becker said that the definition of side yard goes to the wall, not the gutter line.

Mr. Redgate confirmed that the home is not parallel to the property line.

Mr. Becker asked if there was any member of the public who wished to speak to the petition.

Mr. Becker read the Planning Board recommendation. Mr. Sharff said that they looked at pulling the addition in to make it conforming but that would require rebuilding the existing one story structure. He said that this is a small structure on a small lot. He said that shifting the addition to the other side would aesthetically interrupt the lines of the existing house.

Alexe Law and Jon Flood, 7 Cavanagh Road, said that they live across the street from the Tarrants. Ms. Law said that they looked at the plans and are supportive.

Mr. Tarrant said that they spoke with Klays at 2 Cavanagh Road, who said that they were supportive of the plans. Mr. Redgate confirmed that there is a fence between 2 and 6 Cavanagh Road.

Mr. Tarrant asked about keeping the existing nonconforming shed that may have been original to the house. He asked if it would be grandfathered. Mr. Levy said that the Applicant would have to demonstrate that the shed was built prior to Zoning Code that prohibited it. He said that the Zoning Act was enacted in 1925. Mr. Becker said that the house was constructed in 1929 but the Zoning Bylaw at that time probably did not have the yard setbacks or lot area requirements that are in place today. He said that the questions is when was the shed constructed and what were the zoning requirements at that time. Mr. Sharff said that he has a plot plan from 1994 that shows it. Mr. Levy said that the Zoning restrictions probably went into effect before that time. He said that there is no enforcement action to remove it but he was just trying to encourage the Applicant to remove it.

Mr. Becker discussed approval versus denial of the project. He said that removal of the shed without any connection to this special permit will not prevent the Applicant from removing it at a later date and replacing it with a conforming shed without having to come back before the Board.

Mr. Redgate discussed options for building a conforming shed. Ms. Tarrant asked if the rules are different for a garage. Mr. Becker said that they are classed as accessory structures.

Mr. Tarrant discussed the Planning Board recommendation to step the second floor in. Mr. Becker that the Planning Board's interpretation is not consistent with case law that the Board has seen.

The Board discussed making a motion without or without removal of the shed. Mr. Tarrant said that they will agree to take the shed down before completion of the project as a condition.

Mr. Redgate moved, Mr. Levy seconded the motion, and the Board voted unanimously to make a finding that the proposed structure shall not be substantially more detrimental to the neighborhood, and approve a special permit, subject to a condition that the shed be removed prior to the issuance of a Certificate of Occupancy.

Mr. Levy voted aye.

Mr. Redgate voted aye.

Mr. Becker voted aye.

ZBA 2020-45, SANDRA MASTERS, 889 WORCESTER STREET

Present at the public hearing was Sandra Masters, who said that the request is for renewal of a special permit to practice chiropractic at her home at 889 Worcester Street. She said that she would like to tweak the hours to Monday and Wednesday from 8:30 am to noon and 3 pm to 6:30 pm, Thursday from 2:30 pm to 6:30 pm, and Saturday from 8 am to noon, for a total of 22 hours.

Mr. Levy discussed the previous decision and the conditions that are in effect. Ms. Masters said that the total hours that she sees patients is 22 hours. Mr. Levy said that the current limitation to 20.5 hours of practice should be changed to 22 hours. Ms. Masters said that she still has two employees and their hours, not to exceed 25.5 hours, is accurate. She confirmed that the no more than one non-resident employees, no more than six patients per hour, all parking is on the premises, and 889 Worcester Street being her principle residence are unchanged. She said that she has practiced at this location for 24 years.

Mr. Becker asked if there was any member of the public who wished to speak to the petition.

Mr. Levy said that the Planning Board recommended approval.

Mr. Levy moved, Mr. Redgate seconded the motion, and the Board voted unanimously to renew the special permit with the same conditions except that the hours shall not exceed 22 hours per week instead of 20.5 hours, and the special permit shall expire in two years.

Mr. Redgate voted aye.

Mr. Levy voted aye.

Mr. Becker voted aye.

ZBA 2020-36, BELAIR-PROSPECT NOMINEE TRUST, 24 BELAIR ROAD

Present at the public hearing were Laurence Shind, representing the current owner, Verdant Properties, and Michael Caraviello. Mr. Shind that the request is for a special permit/finding that the proposed demolition of the existing nonconforming residence on the lot and construction of a new residence that complies with all dimensional setback requirement will not be substantially more detrimental to the neighborhood than the existing structure.

Mr. Shind said that it is an undersized lot at 9,500 square feet in a 10,000 square foot district. He said that, according to the Assessor's records, the existing house was built in 1922 and it is a small colonial with 1,900 square feet of Total Living Area. He said that the left side is nonconforming with a setback just over 10 feet. He said that existing lot coverage of 14 percent will increase to 24 percent, which is within the 25 percent that is allowed. He said that finished TLAG will be 3,692 square feet, which is slightly over the threshold for the district.

Mr. Shind said that they tried to give careful consideration to the design of the new house and tried to be consistent with the prevailing design of homes in the general area, which is an eclectic mix of styles. He said that they tried to pick up the village style colonial with shingle siding, trim soffits, overhangs, entry porch and a stepped back second floor.

Mr. Shind said that the Planning Board was concerned about the front facing garage versus the predominant detached garages in the immediate neighborhood. He said that many of the lots on the street and in the neighborhood are under 10,000 square feet and many have detached nonconforming garages. He said that by bringing the garage to the front, they will make it conforming and will maximize the useable area for the family in the rear.

Mr. Shind said that he submitted an updated plot plan that shows that they will be adding five evergreens to the right side that were asked for by the neighbor.

Mr. Levy said that the Board received a significant amount of correspondence from neighbors who are opposed to the project and feel that it does not fit in with the neighborhood. He said that a primary reason seems to be that it is a sideways facing house with a garage facing the street. He said that the Board has to make a finding that it is not substantially more detrimental to the neighborhood than the existing structure. He said that is quite persuasive when there are so many neighbors who judge it as substantially more detrimental, though ultimately it is the Board's determination. He said that the Planning Board had the same reaction and recommended denial.

Mr. Levy asked if the Petitioner would like to revisit this. He said that a side facing house is an anomaly in town and the two big garage doors are daunting. Mr. Shind said that the lot is much narrower from side to side than it is front to rear, so it is not a square lot. He said that creates difficulty in designing a house.

Mr. Caraviello said that he is the owner of Verdant Properties. He said that in designing the house they thought about trying to locate the garage at the back. He said that if the garage is in the back and if the garage doors face either of the side lot lines, that would put the garage dead center of the house and shut off any connection of the living space of the house to the yard in the back. He said that it is a function of the width of the lot.

Mr. Caraviello discussed the garage at the front from the perspective of plan view versus walking or driving by. He said that he tried to create a significantly sized porch that would be attractive to someone walking in the neighborhood. He said those were the design issues, given the constraints of the lot.

Mr. Becker said that in correspondence from the neighbors, they also raised the issue of the size of the house. He said that the TLAG for the proposed is slightly more than two percent greater than the trigger for a 10,000 square foot lot, and this lot is smaller than 10,000 square feet, so the intensity of use has gone up a lot. He said that translates for the non-technical person as being too big and too massive. He said that the right side will be 77 feet long solid building in a residential neighborhood, which is a lot. He said that clearly this is a challenging lot because it is undersized and narrow but the proposed plans fill up the box of allowed setbacks.

Mr. Caraviello said that he submitted a living area comparison of homes in the neighborhood. He said that the density of some is comparable to what he is proposing, both on a relative and an absolute basis. Mr. Becker said that he did an analysis using a series of residences rather than some of the surrounding houses.

He said that the Board did not necessarily come to the same conclusion as Mr. Caraviello. He said that many of the lots in this neighborhood are undersized. Mr. Caraviello said that he was pointing out that a number of the properties are densely constructed.

Mr. Becker asked if any member of the public wished to speak to the petition.

Mr. Becker read the Planning Board recommendation.

Andrea and George Weber said that they live directly across the street at 25 Belair Road. Mr. Weber said that they are senior citizens who will probably be most affected by the project. He said that he was also speaking on behalf of his 96 year old mother, who lives a block away. He said that he and his wife have lived there for 30 years, during which time they always saw a charming, picturesque, moderate size home framed by full trees and occupied by a retired, widowed Wellesley College Professor. He said that under the proposal, that situation will be drastically transformed. He said that they would encounter two garage doors and a driveway when they look out their front door. He said that it was hard to imagine that any resident in Wellesley would welcome such a transformation to his or her home. He asked the Board to please not direct such an outcome for the rest of their days. He said that all 13 homes on Belair Road face the street and the proposed home should do so also. He said that this project turns its back on the street and the neighborhood. He said that another compelling reason for the Board to reject the project is the size of the proposed dwelling. He said that it will be twice the size of their home in terms of living space. He said that in their 30 years on Belair Road, they have received unsolicited letters from young couples asking them to sell their home because they believe it would be affordable, given its modest size. He said that they have loved their home every day for 30 years. He asked that the Board not tip this neighborhood to a future of ever larger and more expensive homes. He said that an oversized garage and driveway facing the street is substantially more detrimental than the existing, charming, moderately sized home. He urged the Board to reject the petition.

Lorin Shearman, 28 Belair Road, said that she lives directly adjacent to 24 Belair Road. She said that she has lived in Wellesley for three years and what attracted her was this hidden gem of a historic neighborhood. She said that she was quite disappointed when she saw the plan for 24 Belair Road. She said that she has similar views to the Webers that the sideways positioning of the house on the lot is not welcoming. She said that her house is to the right and one of her concerns is privacy, given that the current design has the entry door on the right side of the structure and has more of an apartment building appearance rather than a very welcoming historic colonial home. She said that there are no other side facing homes on Belair Road. She said that given the entry door, the windows, and the porch facing the side of her house and back yard patio, she has major concerns about her privacy. She said that the design of the proposed home is not consistent with the distinct character of the neighborhood. She said that the larger footprint and the mass of the house would dwarf her house, which is about half the size of what is being proposed. She said that if this large house is built, it could potentially set a precedent for historic homes in the neighborhood to be demolished and rebuilt in a similar manner, transitioning the neighborhood into an urban housing development. She urged the Board to reject the petition.

Peter Solomon, 17 Leighton Road, said that he has been a resident of Wellesley for 30 years, the last 12 of which have been on Leighton Road. He said that he was speaking in opposition to the plan. He discussed comments and issues that came up during Demo Review and a recent Planning Board meeting regarding the project. He said that they expressed concerns about the loss of character and fit with the neighborhood. He said that the Planning Board talked about the garage not being compatible and the townhouse look. He said that over his 30 years as a resident, he has been a petitioner, a proponent and an opponent of applications. He said that he has always struggled with what constitutes the potential subjectivity of what is substantially

more detrimental. He said that he did some research and found a guide from Burlington, CA that talked about how growth can move forward while being additive and also what can be subtracted. He said that the guide points to the importance of having a new renovated structure that draws from original structures, incorporating design threads and planning attributes, which should unify the neighborhood. He said that while certain elements that are proposed check some of the boxes, he believes that the subtracted elements far exceed them. He said that they think of character and charm when thinking about the neighborhood. He said that when the application was submitted, neighbors discussed concerns about the garage, mass, location, structure, orientation and lot size. He discussed the scale of the garage and double wide driveway that takes up more than 30 percent of the frontage and is a dominant feature. He said that houses with garages at the back do not have cars parked in the forefront and anyone going by may be subjected to looking at whatever is in the garage. He said that a side entrance is out of character. He said that he submitted a document that showed Belair, Birch and Leighton Road properties' TLAG versus TLA because the mass incorporates the garage. He said that it was 50 percent larger than the average house when you divided TLAG by the lot size. He said that the landscaping legend references a tree report but it does not appear with the PDF and the street shade trees do not correspond to the legend. He said that a lighting plan would be helpful. He said that given that so much surface area will be covered, he asked about potential overflow for the 1 inch design and what could happen during 25 and 100 years storms in terms of discharge. He said that he hoped that the Board had a chance to see the petition that was signed by 17 residents. He read excerpts from the petition. He said with no door facing the street, you will have to walk 65 feet to get to the street. He said that it is a non-people oriented design. He displayed a schematic of the neighborhood and a scaled overlay of the new dwelling, which he dropped on the comps in the neighborhood to give a relative perspective. He said that he dropped the overlay on the biggest houses. He said that this design has 70 plus feet of linear wall.

Maggie Tushman, 25 Leighton Road, said that she and her family have lived there for over 13 years. She said that her backyard directly abuts the backyard at 24 Belair Road. She said that they renovated their historic home that was built in 1909 a few years ago. She said that their lot is slightly smaller than 24 Belair Road. She said that they chose to not have a garage, despite the fact that they really could use one. She said that it was very difficult to fit it in and keep the character of their historic home and the neighborhood. She said that she is not opposed to new construction but believes that the plan for 24 Belair Road is too large and out of character with the neighborhood. She said that its main entry will be halfway down its right side, so the new house will face her backyard and her neighbors at 28 Belair Road. She said that visitors and delivery people approaching the main entrance will walk and look towards her backyard, which is currently private. She said that the new house will be 2.5 stories running all the way back to 17.7 feet from the back lot line. She said that the existing house is 69 feet from the rear lot line. She said that this will have a significant negative impact on the privacy and views from her house. She said that her family will be looking at a very tall and wide structure with second floor windows facing them, making them feel boxed in and exposed. She said that TLAG, not TLA, is the relevant metric to understand the scale of the proposed structure vis a vis the neighbors around it. She said that she emailed a spreadsheet to the Board that added garage sizes back to the Petitioner's exhibit so that TLA plus garage over lot size could be considered. She said that the 24 Belair Road plan is 38 percent greater in TLAG over lot size. She said that she hopes to see investment in the neighborhood and believes that there is a way to do this that will enhance the neighborhood. She said that this plan is not in keeping with the character of the houses around and it is her belief that it needs to be modified.

Karin Lifter, 23 Belair Road, said that she and her husband moved there 35 years ago to raise their children. She said that they were charmed by the neighborhood with comfortable houses, shared spaces and a sense of community. She said that one of the biggest issues with respect to the proposed plan is the garage facing the street will wall off a family from the community. She said that there is a sense of disengagement that is

presented with that kind of construction. She said that the position of the house and the way that the neighborhood is set up matters in terms of supporting a sense of community. She said that a tear down and replacement with a much bigger house could start a chain reaction of teardowns and bigger houses. She said that a number of neighborhoods in Wellesley are suffering with teardowns and houses that are bigger than the original house and there is a sense of crowding. She said that the houses in this neighborhood are different sizes. She said that it is a hidden gem and has its own character. She said that the neighborhood is important to Wellesley and the center. She recommended that the proposal be deemed detrimental. She said that she agreed with Ms. Tushman that something better is possible on this site with a gracious frontage to the street.

Lori Woodacre 21 Leighton, said that she has been a resident of Wellesley for 30 years, 18 years in the Dana Hall area on Brook Street and 9 years at 21 Leighton Road. She said that her property abuts the back of 24 Belair Road. She said that of the names that were submitted by the Developer, she does not know of any of them who are in favor of this project. She said that her 1912 house was probably one of the first ones built for professors at Wellesley College. She said that it is a large Victorian. She said that the driveway is long and way in the back for the garage. She said that it would be much more convenient to have the garage closer to the street but she would not dream of it. She said that this neighborhood, and Belair Road in particular, has many houses with garages at the back. She said that the house at 34 Leighton Road was recently built with a garage under to conform with the neighborhood. She said that the porch on the proposed house is so small in comparison to the garage. She said that all you will see is the garage and possibly its contents. She said that it is not consistent with the prevailing design. She said that she would like to see the Developer go back to an architect to see if he can do better. She said that the neighbors are not opposed to development. She said that almost all of the houses in the neighborhood that have been improved or torn down have been very much in keeping. She said that it is a gem of a neighborhood. She asked that the Developer reconsider the front of the design of the house.

Mr. Becker said that comments that the Board heard were consistent with emails that it received. He discussed what the next step should be. He said that his sense of the Board is that it is leaning more toward the Planning Board recommendation than to approval. He asked that Mr. Shind and Mr. Caraviello what the next steps should be. Mr. Shind asked about considering neighbors' comments and requesting a continuance versus withdrawal with a re-submittal. Mr. Becker discussed challenges with schedules during Covid. He said that there are currently no further meetings scheduled, so the hearing could not be continued to a date certain.

Mr. Caraviello said that he approved of a request to withdraw the petition without prejudice. He said that when he spoke with the abutters, he was not aware of the amount of opposition to the plan. He said that if he was made aware of the opposition he would have made some tweaks to the design. He said that he had not heard any of the concerns until the hearing.

Mr. Levy said that it is normally the Board's practice to encourage developers to reach out to the neighbors. He said that has been difficult to do in the past four months.

Mr. Caraviello said that he lives in the neighborhood at 22 Dover Road. He said that he did not have to come before the Board to build that house. He said that a lot of people were upset when he tore the house down. He said that everyone that he has spoken to since he built his house has said that it looks like it has been there forever and is probably one of the nicest houses that has been built in town in the past 20 years. He said that he is cognizant of the nature of the neighborhood and wants to do his best to maintain that character.

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

Mr. Redgate voted aye.

Mr. Levy voted aye.

Mr. Becker voted aye.

Mr. Levy moved, Mr. Redgate seconded the motion, and the Board voted unanimously to authorize the Executive Secretary to sign the decisions on behalf of the Board members after review and email authorization.

As there was no further business to come before the Board, the hearing was adjourned at 10:30 pm.

Respectfully submitted,

Lenore Mahoney  
Executive Secretary

DRAFT