



## ZONING BOARD OF APPEALS

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ROBERT W. LEVY  
WALTER B. ADAMS  
DEREK B. REDGATE

Thursday, May 7, 2015, 7:30 p.m.

Juliani Meeting Room  
Town Hall

Zoning Board of Appeals Members Present: Richard L. Seegel, Chairman  
Robert W. Levy  
Walter B. Adams

Excerpt from Minutes

ZBA 2015-45, 11 SAGAMORE PARTNERS, LLC, 11 SAGAMORE ROAD

Presenting the case at the hearing were David Himmelberger, Esq., and Dan Goldstone, Manager, 11 Sagamore Partners, LLC, (the Petitioner).

Mr. Himmelberger said that the request is for a special permit to rebuild a single family home on a nonconforming lot. He said that the existing lot is 18,082 square feet in a Single Residence District requiring 20,000 square feet. He said that the existing home was built in 1934 and is of modest size. He said that existing lot coverage is 1,980 square feet or 11 percent. He said that the proposed home will be fully compliant with dimensional setbacks. He said that front yard setback will be 36.7 feet, the side yard setbacks will be compliant and the rear yard setback of 54.1 feet. He said that the proposed home will be 34.3 feet tall from average grade. He said that Total Living Area plus Garage (TLAG) will be 5,478 square feet which is below the threshold of 5,900 square feet for the district. He said that the proposed home will have lot coverage of 3,194 square, or 17.7 percent. He said that lot coverage will meet the standard of 18 percent for lots between 20,000 and 40,000 square feet. He said that roof gutters and drains will be tied into galleys at the rear of the home, which will reduce runoff from the property. He said that the proposed home is an attractive colonial without the third floor roof dormers that are frequently found on larger homes. He said that the house next door at 3 Sagamore Road has a TLAG of 6,300 square feet. He said that the Petitioner requests that a special permit be granted with the finding that it will not be substantially more detrimental than the pre-existing nonconforming structure that it seeks to replace.

Mr. Himmelberger said that the Petitioner has been made aware of significant opposition from numerous neighbors. He said that neighbors at 3 and 15 Sagamore Road submitted emails to the Board outlining their concerns. He said that he responded to those emails and sent copies to the Board. He said that,

subsequent to last night, two or three other emails were submitted to the Board raising similar points. He said that one of the issues is the side lot line. He said that the Petitioner believes that the Engineer-stamped plan sets the line. He said that the Plot Plan shows that the neighboring fence from 3 Sagamore Road crosses onto 11 Sagamore Road. He said that the As Built Plan for 3 Sagamore Road has the identical side yard length as 11 Sagamore's. He said that the fence has an unusual jog at the rear of it. He said that it appears that it was done that way to go around existing bushes on 3 Sagamore Road that had expanded onto 11 Sagamore Road. He said that the Town's GIS Map confirms that it is a straight line.

Mr. Adams asked about the Zoning Legend on the Plot Plan. Mr. Himmelberger said that when the Applicant was first here there was an issue with the side yard setback for the garage, as well as the front yard setback having to comply with the 500 Foot Rule. He said that pushing the house back put the right rear corner inside of the side yard setback. He said that a modification was made to that. He said that the current Plot Plan accurately shows the dimension on the ground but the legend was not changed. He said that they submitted a revised plan to show the legend reflecting the dimension on the ground.

Mr. Seegel said that the Zoning Legend shows a maximum building height of 45 feet, which is not correct. Mr. Himmelberger said that the proposed height is 31.8 feet.

Mr. Seegel said that he was concerned about the proposal to substitute a very large house for a relatively small house. He said that he was also concerned about an issue with the 500 Foot Rule. He said that going up Sagamore Road by 15, 19, 25, and 33, the setback would have to be at least 48 feet. Mr. Levy said that the Board would need to see a plan showing the houses within 500 feet to make that determination. Mr. Seegel said that the 500 Foot Rule works in both directions. Mr. Himmelberger said that his understanding of the Building Inspector's position is that, the 500 Foot Rule is satisfied in either direction. He said that 3 Sagamore Road has a 36.5 foot front yard setback, which was used as the controlling number. Michael Zehner, Planning Director, said that the Building Inspector is correct. He said that you measure in both directions and take the closest home in either direction. He read an excerpt from the ZBL regarding the 500 Foot Rule.

Mr. Himmelberger displayed a photo board that shows the existing houses in the neighborhood.

Mr. Seegel said that a lot of neighbors have objected to the proposed structure and think that it would be substantially detrimental to the neighborhood. He said that there was a similar situation several years ago for a house at the corner of Hundreds Road and Woodlawn Avenue. He said that it was an undersized lot. He said that the builder was able to purchase land from an abutter to make it a conforming lot.

Mr. Himmelberger said that this section of Sagamore Road is on a slope. He said that 15 Sagamore is above 11 Sagamore and is 10 feet higher. He said that the house at 11 Sagamore will never be taller than the house at 15 Sagamore. He said that 3 Sagamore was built in the last 10 years on a bit of a mound, so it sits up higher.

Mr. Seegel said that when an entire neighborhood objects, the Board must find that it would be more detrimental. He said that the house does meet the development standards in the bylaw but it does require a special permit. Mr. Levy said that the only nonconformity is the lot size. He said that if the lot was conforming, the project could be done by right.

Mr. Adams said that the Applicant has the right to show drawings of the houses on the street and how the proposed building will fit in.

Katy Brunner, 3 Sagamore Road, said that they are the southeast abutters. She said that they moved to 3 Sagamore Road in August of 2014. She said that she and her husband have written letters to the Board expressing their significant objections to the mass and bulk. She said that the plans as they are seem to be riddled with problems. She said that Version 3 of the plans is before the Board and there are still mistakes. She said that she has not seen a finalized revision. She said that they were verbally told last Friday that the plans are finalized. She said that they know that something pretty big will be built but they would like to see something graceful. She said that they are the neighbors with the fence line issue. She said that they retained a land surveyor to stake their lot. She said that the Surveyor has significant problems with the plans as they are drawn. She said that he was present at the public hearing to address the issues. She said that the special permit should be denied due to the amount of inaccuracies in the plans. She said that they need to be cleaned up and revised before discussing the mass, the bulk and the neighborhood. She said that 3 Sagamore Road is on the corner of a three way intersection and there is plenty of air and space around the house, which is why it does not appear to loom. She said that it is down the slope from 11 Sagamore Road. She said that the house will be a half story taller than their house. She read a letter of opposition from her neighbor, Katie Curran, who was unable to attend the public hearing.

Mr. Seegel confirmed with Mr. Himmelberger that the plans dated March 30, 2015 are the plans that will be submitted to the Building Inspector. Mr. Himmelberger said that the only difference in the plans submitted to the ZBA and the plans dated April 10, 2015 was the legend correction that was proposed. He said that the legend was corrected to catch up with the revision that reflected the 20.9 foot side yard setback that was the result of reconfiguring the house. He said that was the only change.

Verne Porter, 354 Eliot Street, Newton, said that he is a Registered Land Surveyor who was hired by the owners of 3 and 15 Sagamore Road to perform an instrument survey on their property and review the Site Plan that was submitted. He said that he went out and staked the property lines. He said that the fence is a little over the lot line. He said that the plan that he looked at seems to have quite a rotation issue. He said that there is an angle point on the lot line that comes up Sagamore Road and bends and heads back. He said that when they staked the lot, the lot corner fell outside of the fence area. He said that they found a concrete monument there. He said that the plan shows a hydrant to the left at 15 Sagamore. He said that the hydrant scales to be 15 feet from the street line into the street. He said that this is a 40 foot layout road. He said that it should have 24 feet of pavement. He said that the hydrant should be within 5 to 8 feet from the property line. He said that it is shown as 15 feet in from the street. He said that there is clearly a drastic rotation in this plan. He said that the plan needs to be fixed. He said that someone needs to go out and look at the markers that Mr. Porter set. He said that the survey is off by feet. Mr. Seegel asked if the diagonal line on the northeast side of 80.97 is not in the proper location. Mr. Porter said that is correct. He said that the lot corner where 102.92 and 80.97 shows at 6 feet into the property at 3 Sagamore Road. He said that point is on the outside of the fence. He said that the plan is off by approximately 6 feet. He said that the setbacks should be verified. He said that the Surveyor showed the back of sidewalk on the plan. He said that it does not correspond to the lot line that is shown on the plan. He said that the hydrant to the left is out in the street. He said that the lot line should be parallel with all of those locations even though it is curved. He said that it is off by a lot, not a little. He said that the Board had discussed the other issues with the Zoning Legend. He said that his opinion is that the Surveyor should redo the survey because there is a mistake in the plan. Mr. Seegel said that the question of the lot line will have to be determined.

Mr. Seegel said that there is no revision date on the plot plan.

Hank Solomon, 25 Sagamore Road, said that he has been a resident there for 45 years. He said that has been an outpouring of neighbors and he knows of seven other people who object to this project. He said that there will be a 30 percent increase in height, 50 percent increase in lot coverage, and more than three times the size when you consider the garage. He asked how that would be positive for the neighborhood. He said that it is an outrage. He said that people need to respect the traditions of the existing neighborhood. He said that developers should speak with the neighbors about what they are all about and what they would like to see. He said that he wanted to express the angst and disappointment of the neighbors on Sagamore Road.

Phil Jameson, 15 Sagamore Road, said that he sent emails to the Board. He said that he has three main issues. He said that he respects the right of a property owner to do the things that they want to do on their property. He said the project will impact his property directly and impact the landscape of the neighborhood. He said that communication with the owner throughout the process has been a concern. He said that a couple sets of plans have been submitted. He said that has raised issues about inconsistencies. He said that the first plan changed from a front facing to a side facing garage and the setback changed. He said that the uncertainty with measurements is concerning to him. He said that there are a number of things that have not been clear. He displayed pictures of the property. He said that there is green space between the properties. He said that they always thought that the lot line was somewhere in the middle. He said that he shared taking down the tree that was in the middle with the previous owner. He said that after having his property staked, it is unclear where the property line is and where the driveway will be. He said that he was concerned about loss of the green space. He said that he was concerned about disturbing the look for the area and the relationship to his house. He said that he was concerned about a big tree that is on or near the line. He said that it will not survive if there is digging for the driveway. He said that coming into the neighborhood and not seeing the green space would be detrimental. He said that he was concerned that the structure will go right up to the setback limits within inches. He said that they are squeezing the house into the space. He said that there will be three times the size mass facing the street. He said that his house is higher but it is set back. He said that 3 Sagamore Road is a big house but was tastefully done. He said that even though it is big, it sits on the corner lot where there is a lot of open space. He said that got a little notice in the mail about the builder's plans and asking them to sign off on them. He said that he sent an email asking about what he would be signing for. He said that he was told to call the Town Hall to get the plans. He said that did not feel very welcoming. He said that neighbors became concerned about the intent, character, and characterization multiple errors. He said that the plan that was submitted in February had a 46 foot front yard setback listed in the Zoning Legend for 3 Sagamore Road. He said that he did not even notice the change to 36.5 feet in the plans that he saw on Friday. He said that there have been about five errors. He said that, coupled with the survey issues, made him concerned about the integrity of the plans and the accountability of this big mass going into a small space. He said that the owner could have done much more by gathering neighbors and asking their opinion of the plans. He said that he understood that the business is to build a big house and sell it off. He said that all of the neighbors are in an uproar for a reason. He said that this is not just about not wanting change. He said that the owner created uncertainty and that bred anxiety in all of the neighbors. He said that he has so many unanswered questions and it does not seem right to continue at this stage.

Sam Hunt, 50 Old Colony Road, said that his wife grew up at 50 Old Colony Road, where her parents still reside. He said that her parents were unable to attend the hearing and asked Mr. Hunt to read a letter to the Zoning Board.

Tim Fisher, 36 Sagamore Road, said that he is not an abutter but does live in the neighborhood. He thanked his neighbors for their efforts. He said that he moved to the Sagamore neighborhood because of its unique characteristics. He said that the proposed structure would be extremely detrimental. He said

that he would like to see something more amenable to the neighborhood. He said that he was concerned about the level of detail and the mistakes in the plans. He said that there is a great deal of uncertainty about what the final product will look like. He said that they would like to see it stay within the scope and the characteristics of the neighborhood.

Peter Gearhart, 23 Plymouth Road, said that he and his wife are direct abutters along one of the rear property lines. He said that they were opposed to the scale of the new house. He said that they have lived in their house for over 30 years. He said that trailing teardowns is a significant loss of mature vegetation. He said that many of the lots are clear cut when they are redeveloped. He asked that the Board not only consider the building plans but also the landscape plans.

Ciara Belliveau, 2 Sagamore Road, said that she lives across the street and will see the new structure out her windows. She said that she has the same objections as everyone else. She said that they it will be detrimental to the neighborhood. She said that she moved in eight months ago. She said that she bought the house based on what the neighborhood looked like. She said that she would like to see the neighborhood continue to look the way that it did when she bought her house.

Mr. Seegel recommended that Mr. Himmelberger request to withdraw the petition without prejudice. He said that he thought that the builder should go back to the drawing board and work with the neighbors. He said that the Surveyor should do more research. He said that there is a property line in dispute. He said that another Surveyor has found boundaries and put rods in. He said that he would also like to see in the re-submittal a plan that shows existing trees, which trees will be saved and which trees will be coming down. He said that he would like to see a plan from a Certified Arborist for the trees that will be saved. Mr. Adams said that he would like to see an Elevation Plan showing the houses on either side. He said that he would like to see a better set of plans with more elevations and more detail. He said that the Board cannot grant a special permit when there are a substantial number of people from the neighborhood who object to the size, mass and bulk of the proposed house. He said that they will have to put something there that neighbors will find a little more acceptable. Mr. Adams said that, alternatively, the Applicant can try to convince the Board that the proposed structure will be in keeping with the neighborhood.

Mr. Adams said that some of the issues are determined by the ZBL. He said that a concern heard that he heard tonight was about larger homes in the neighborhoods, even though this neighborhood already has larger homes. He said that the Town now has a Large House Review process and does require TLAG calculations but they still allow very large homes, many of which people object to, especially in neighborhoods with smaller homes. He said that it is a common theme in town. He said that the Town needs to figure out ways to redefine the bylaw and allow redevelopment but not allow big large blocks of homes in a neighborhood where they are not well received. He said that the ZBL does not regulate the style of homes but does regulate bulk, mass, height and distance from setbacks.

Mr. Seegel said that the plans say that they were done by a Designer in Manchester, New Hampshire. He said that there is no indication that an architect was involved.

Mr. Himmelberger said that he did not believe that anyone had objected to the appearance of the structure but did object to the mass. He said that this is not simply a popularity contest. He said that he was concerned about some of tenor of the comments. He said that he could appreciate the anxiety that change can bring about. He said that they will do a better job of sharing the information going forward. He said that no trees were scheduled to come down. He displayed a picture of the back yard at 11 Sagamore. He said that the neighbor at 50 Old Colony Road complained about being able to see the new structure. He said that they sit 25 feet higher on the hill, a house and a half away.

Mr. Himmelberger requested that the Board allow the petition to be withdrawn without prejudice.

Mr. Levy said that the neighborhood view is important in the Board rendering its decisions. He said that it is the Board's decision as to what is substantially more detrimental. He said that the Board goes to great lengths to listen to the public and hearing what they have to say. He said that the ultimate decision is under the Board's jurisdiction. He said that the Board encourages applicants to meet with the neighbors to try to get them on board before coming to the ZBA. He said that the neighbors might have some good ideas. He said that it is change that brings the outpouring of people at the hearings. He said that spec houses also bring outpouring of neighbors. He said that if this was a custom house that the previous owner wanted to build, the hearing room would be half the size of what it is tonight.

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

