

**ZONING BOARD OF APPEALS**

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ZBA 2009-04  
Petition of Appian Corp.  
169 Grove Street/30 Benvenue Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, February 5, 2009 at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of APPIAN CORP. pursuant to the provisions of Section XVID and Section XXIV of the Zoning Bylaw of the decision of the Planning Board to deny the application for Large House Review for 169 GROVE STREET & 30 BENVENUE STREET.

On January 20, 2009 the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Dean Behrend, Appian Corp. (the "Petitioner"), who said that he was appealing the Planning Board's decisions for Large House Review for 169 Grove Street and 30 Benvenue Street. He said that the main development criteria of Large House review had been met. He said that the Design Review Board (DRB) and the Town Engineer had approved the plans that were put forward. He said that neither house will appear massive due to the ratio of the house size to the lot. He said that the lots are oversized for the 10,000 square foot district.

The Board said that the properties would be considered separately.

**169 Grove Street**

The Board asked what in the Planning Board's decision for denial of the application for 169 Grove Street contradicts the bylaw and why. Mr. Behrend said that he revised the plans for 169 Grove Street to meet the criteria of the Planning Board. He said that the Planning Board thought that the buffer would be compromised. He said that the plan was to remove four trees and replace them with 29 new trees. He said that he submitted a letter from an arborist stating that the trees are listing 40 degrees and are infested.

The Board asked if trees were being removed to accommodate moving the easement. Mr. Behrend said that the proposed tree removal was a safety factor for the proposed house. He said that they will not move the pavement or the easement until they have a decision from the Land Court. He said that he has been trying to make an agreement with the Friend's Meeting House but has not had a response from them.

The Board said that the Planning Board was concerned that mature trees that buffer Ingraham Road from this property will be taken down. The Board said that if the trees are removed at the property line and the easement is moved over, there will be a substantial dropoff to Ingraham Road. The Board said that under the bylaw the Planning Board has the authority to consider the buffer area.

Mr. Behrend said that they will be regrading the existing pavement because it pitches towards the abutters and is washing runoff onto the abutting properties. He said that there is a large ponding area on 169 Grove Street that is due to the lot not being properly graded. He said that they spoke with the Town Engineer to develop a plan to help the water dissipate across the site.

Mr. Behrend said that the paved area must be regraded. He said that it is possible to save the trees. He said that they are inside a six foot stockade fence. He said that there is approximately 12 feet beyond the fence line that is not being used because of runoff issues.

The Board asked how the Planning Board was incorrect in its decision.

Mr. Behrend said that the buffer area has compromised trees on it. He said that the Town has already encouraged them to remove one of the trees because it has failed. He said that due to a disease that spreads to the roots the other trees will fail. He said that the new homeowner would then be responsible for removing those trees. He said that he presented pictures of the trees with mushrooms growing out of them and cracks in the sides to the Planning Board.

Mr. Behrend said that the Planning Board may have had the wrong conception about the grading. He said that the only place that they will take the grade down is where the land crowns between Lot 1 and Lot 2.

The Board asked why it would be necessary to move the easement as far as Mr. Behrend was proposing. Mr. Behrend said that they have to take the pavement up for sewer work. He said that they would take the opportunity at that time to pitch the grade properly.

The Board said that there is a fence proposed on either side of the 12 foot easement. Mr. Behrend said that it will be a four foot open stockade fence to prevent children in the house from crossing the road. He said that the existing fence will be relocated along the property line. He said that they will be planting screening along the property line. He said that Ingraham Road is substantially lower than Grove Street.

Mr. Behrend said that the Planning Board misunderstood the grading plans. He said that they will not be lowering the lot significantly.

Mr. Behrend said that the proposed house was restructured three times to accommodate the neighbors' concerns.

The Board said that there are three issues of concern; that moving the easement closer to the neighbors will create an intensification at the neighbors' backyards, the natural landscaping and the grading will be changed, and the retaining wall will create an intensification right at the property boundary. The Board said that one of the findings in Large House Review is that landscape shall be preserved in its natural state insofar as practicable.

The Board said that Mr. Behrend was proposing to provide a landscaped buffer that will benefit the proposed house.

The Board said that the proposed size of the house is a concern.

The Board said that Mr. Behrend should explain how the Planning Board's finding was incorrect with respect to the three issues, given the criteria of Large House Review.

Mr. Behrend said that the wall for Lot 1 will not go the distance of the property. The Board said that the road will be moved closer to the abutters. There will be an access road right up against their back yards. Mr. Behrend said that there is an existing roadway there. The Board said that there is a lot of existing vegetation there. The Board said that Mr. Behrend is proposing to change the natural landscape.

The Board said that it was concerned about plowing on the 12 foot driveway. The plan is to wall the easement on both sides.

The Board said that the drive would need to be 18 feet to be two-way. Mr. Behrend said that the easement is designed for one-way traffic either way. He said that it is 15 feet at its widest point and narrows down to 11 feet. He said that the easement opens out to a large parking lot on the Friends' property. Mr. Behrend said that the drive has always served as an exit for the Friends. He said that the entrance to the Friends is located on Benvenue Street. Mr. Behrend said that he proposed to pay to put in a new exit out to Benvenue Street. He said that he also proposed an exit out to Ingraham Road.

Mr. Behrend said that TLAG for the house is 5300 square feet including the area over the garage. He said that the heated areas will be 4500 square feet.

Mr. Behrend said that he met with the Assessor and the Building Inspector and used their methodology for calculating TLAG. The Board said that the bylaw describes how to calculate total living area and that the Planning Board should make that determination. The Planning Board considers the proposed house to be too large.

Mr. Behrend said that he has owned the lots for three years. He said that the cost of the lots requires that good sized houses be built to be marketable.

The Board said that the Planning Board was concerned that the size of the proposed house would be inconsistent with the abutting properties on Ingraham Road. Mr. Behrend said that he measured the size of the houses that abut the site. He said that he was trying to make a transition from the older homes on Ingraham Road to consecutively larger homes on Grove Street.

The Board said that although there are large houses in the area, there should be a transition along Grove Street. Mr. Behrend said that he reduced the height of the house. Mr. Behrend said that the the house will be 1.5 stories at the back and 2 stories at the front.

Mr. Behrend said that it is feasible to leave the significant trees on Lot 2 and to leave the passageway where it is.

Don McCauley, 7 Pine Plain Road, Vice Chairman of the Planning Board, said that the proposed house is very large. He said that it would be located in a 10,000 square foot district. He said that the lot is long and narrow. He said that the design of the house creates a long wall that will overshadow the neighboring properties. He said that it is at a higher grade than the neighboring properties. He said that the proposed house would create an abrupt change to the neighborhood.

Mr. McCauley said that Mr. Behrend created a long narrow lot that is constrained by the easement. He said that although there will be unfinished areas on the house, they will still be visible and will contribute to the mass and bulk of the house.

Mr. McCauley said that the bylaw addresses preservation of landscape to offset the impacts of larger houses. He said that the proposal is to narrow and thin the vegetated buffer and eliminate it in some places.

Mr. McCauley said that moving the easement to the boundary will shift the burden to the neighbors. He said that the neighbors are somewhat shielded from the existing easement because it is set in from the property line.

Mr. McCauley said that construction of the retaining wall and thinning the vegetated buffer are significant issues. He said that the Planning Board was also concerned about safety issues with narrowing the easement and long term maintenance of the easement. He said that the entrance onto Grove Street will be affected.

Mr. McCauley said that although there are large houses on Grove Street, this parcel is pushing too hard to make use of the lot at the expense of the neighbors. He said that there were reductions made but the Planning Board felt that it did not go far enough. He said that the substantial unused areas create mass on the house. He said that the encroachment onto the vegetated buffer and the issues of narrowing and replacement of the easement were felt to be inconsistent with Large House Review.

Rosemary Donahue, 9 Maple Road, Planning Board Member, said that the Planning Board gave the application careful consideration. She said that most of the Board members walked the site with Mr. Behrend and some of the neighbors to understand the impacts.

Ms. Donahue said that the Board had been concerned about the width of the easement and snow removal.

David Himmelberger, 387 Linden Street, said that he is counsel to the Trust for the Monthly Meeting of the Friends. He said that his client does not believe that there was any error made by the Planning Board in its decision. He said that the pitch of the existing driveway could be corrected in place. He said that the mass of the proposed house hasn't changed since the Planning Board made its decision regarding the building scale. He said that moving the driveway to the edge of the property, propping it up with a retaining wall, containing it with a fence and removing the vegetated buffer is what the Planning Board focused on. He said that the Planning Board decision was correct and harmonizes with the bylaw.

Mr. Himmelberger said that the custom is that the easement is used as a one way towards Grove Street. He said that there is a deed restriction as a right of way. He said that the Wellesley Friends currently take care of plowing the easement.

Wendyl Ross, 26 Benvenue Street, said that the Friends customarily use the easement to exit their property. She said that they tend to keep traffic one way. She said that oil and other large trucks must come in from Grove Street because of the MWRA easement.

Al Thoman, 2 Ingraham Road, said that TLAG for his house is 2264 square feet. He said that the house that abuts 169 Grove Street is approximately 2585 square feet of TLAG.

Lee Nuwaysir, 25 Ingraham Road, said that the previous owners of the property used the easement as a two way into and out of the school.

The Board said that Large House Review was enacted by Town Meeting to prevent impacts to neighbors from large houses. The Board said that the Planning Board's finding with respect to landscape and the roadway did not have any error. The Board said that the building scale was reduced but there is no error in the decision that the house is inconsistent with abutting properties. The Board said that there was no error in the findings for open space or traffic circulation.

### **30 Benvenue Street**

The Board said that building scale was a concern for the DRB for 30 Benvenue Street. DRB recommended that the Planning Board look at the architectural details, the open space and landscape preservation.

The Board said that location of the aqueduct limited siting of the house on the property.

Mr. Behrend said that he will be installing a hemlock hedge down to the property line. He said that there will be 29 trees planted. The hemlocks will be eight feet high. He said that the house at 14 Ingraham Road sits considerably lower than the site. He said that the height of the proposed house will be 33 feet.

Mr. Behrend said that the proposed house is smaller than the one that was previously on the lot. He said that it will meet all of the setback criteria. He said that the impervious area will be reduced. He said that the house will be screened around the perimeter. He said that they will be fixing the grade at the easement and moving it back approximately four feet. He said that the existing fence on the boundary will be preserved. He said that a portion of the fence will be moved back to the property edge at the top of the retaining wall. He said that the fence is six feet high on top of the grade. He said that there was a plan to plant vegetation to grow over the top of the wall. He said that there will be a 12 in ch space between the top of the wall and the fence for plantings. Mr. Behrend said that those plans were among the last ones submitted to the Planning Board.

Mr. Behrend said that they tried to preserve the buffer area. He said that the fence will be moved. He said that the height and TLAG of the house was reduced following DRB recommendations. He said that it is a 26,000 square foot lot. He said that the proposed house will meet all setback requirements.

Mr. Behrend said that he submitted a visual sight line plan and top views of landscaping. He said that he listened to the abutters and tried to accommodate their concerns. He said that he will be preserving the evergreens that were originally proposed to be removed.

Mr. Behrend said that there are two existing walls on the abutter's property.

The Board asked how the flow of water will be corrected. Mr. Behrend said that it will be pitched to the open area on his property. He said that he will not be installing any drainage equipment in the easement. He said that other runoff will go down the driveway towards Grove Street due to the slope.

Mr. Behrend said that they tried to preserve the landscape and buffer, tried to prevent erosion with a retaining wall, will reuse the existing fence on the site and will be planting more vegetation.

Mr. Behrend said that they lowered the roof and reduced the size of the house. He said it is a 26,000 square foot lot. He said that the proposed house will be substantially better than the house that was there.

The Board asked where the Planning Board erred in its decision. Mr. Behrend said that they erred with respect to the landscape buffer area because they didn't taken into account that more plant material will be added. He said that they will be solving erosion and runoff problems.

The Board asked if it was possible to leave the fence by the road. Mr. Behrend said that would not be the best location for it after the site is regraded.

The Board asked if there had been any changes to the architectural details. Mr. Behrend said that he cut a peak of the house and lowered it three feet. He said that they reduced the interior TLAG.

Mr. Behrend said that the previous circulation was down the easement. He said that the new driveway will go over the aqueduct and out to Benvenue Street. He said that the building scale was reduced to address the visibility issue. The Board said that it was not concerned about a 33 foot high house.

Mr. McCauley said that the plans for 30 Benvenue Street were submitted at the last minute. He said that there was an existing large structure on the site but there was a significant amount of open space. He said that where there had been one structure on the lot there will now be four structures. The Board said that there was a valid ANR plan.

Mr. McCauley said that half of Lot 1 is unuseable. He said that made siting a house difficult. He said that with the row of hemlocks it may be impossible to walk around the house. He said that the house will be sited as close as it can be to the edge of the lot.

Mr. McCauley said that the Planning Board was concerned with siting and massing of the house. He said that they were concerned with the excessive ornamentation. He said that, of primary concern, was preservation of vegetation. He said that they felt it was not justifiable to have the retaining wall in the middle and that ivy would be a poor substitute for the existing vegetation.

Mr. Behrend said that the purpose of the retaining wall was to stop erosion and to provide a new planting area. He said that he could eliminate the retaining wall but erosion would continue.

Rosemary Donahue said that the constraints of the lot push the house to the proposed location. She said the constraints should be reflected in the size of the house that is constructed. She said that the plans were submitted on the night that the Planning Board voted after many weeks and months of hearing the case. She said that they were approaching the deadline because of all of the time that had elapsed. She said that there was not enough time to understand the need for the retaining wall or the impacts of the wall on the abutters. She said that some of the abutters had said that they would not allow Mr. Behrend to come on to their property to construct the retaining wall.

Ms. Donahue said that there was serious concern about what vegetation would be disturbed. She said that they were concerned about what was being planted and when. She said that it would take seven to eight years before the screening was effective for the neighbors.

The Board said that the matter should be remanded to the Planning Board. The Board said that the retaining wall may be removed, but the size of the house does not have an impact that is adverse to any of the abutting properties.

Ms. Donahue said that the Planning Board would try to expedite the process.

David Himmelberger said that the driveway relocation was modified from its original proposal but it still does not match up to the Friends' property. He said that there is a change in grade. He said that the proposal by Mr. Behrend is to fill in the grade on the Friends' property, which the Friends are not in favor of. He said that Appian Corp. has filed an action in Superior Court to relocate the easement.

### Statement of Facts

The subject property are located at 169 Grove Street and 30 Benvenue Street, in a 10,000 square Single Residence District.

The Petitioner is appealing the decision of the Planning Board to deny the applications for Large House Review for 169 Grove Street and 30 Benvenue Street.

### Submittals from the Planning Board – 169 Grove Street

- Letter of denial for LHR-08-03 #169 Grove Street to Kathy Nagle, Town Clerk, dated August 22, 2008.
- 5 Bedroom Colonial, 169 Grove Street, Wellesley, MA, prepared by John C. Staniunas Architects.
- Sheet A-1, Left Side Elevation, revised 7/27/08, 8/22/08
- Sheet A-2, Right Side, Left Side, Front Elevations, revised 7/20/08, 8/22/08
- Sheet A-3, Basement & Foundation Plan, revised 12/18/07, 8/22/08

- Sheet A-4, First Floor Plan, revised 8/22/08
- Sheet A-5, Second Floor Plan, revised 7/27/08, 8/22/08
- Dean Behrend, 169 Grove Street, prepared by MetroWest Engineering, Inc. - Sheet 1 of 1, Existing Conditions Plan
- Dean Behrend, 169 Grove Street, prepared by MetroWest Engineering, Inc. - Cover Sheet- Lot 2
- Sheet 1- Lot 2, Proposed Layout Plan, revised 02/18/08, 07/10/08, 09/02/08, 10/31/08
- Sheet 2- Lot 2, Proposed Grading & Utility Plan, revised 02/18/08, 07/10/08, 09/02/08, 10/31/08
- Sheet 3- Lot 2, Proposed Landscaping Plan, revised 02/18/08, 07/10/08, 09/02/08, 10/31/08 (7/10/08 revision shows driveway easement sections B-B and C-C)
- Proposed Access Driveway Cut and Fill Calculations, Grove and Benvenue Streets.
- Volume Calculations, prepared by MetroWest Engineering, Inc.
- Dean Behrend, 169 Grove Street, prepared by MetroWest Engineering, Inc. - Sheet 1 of 1, Proposed Erosion & Sedimentation Control Plan, Scale 1" = 20'
- Hydrologic Assessment, Proposed Site Development, Benvenue and Grove Streets, Wellesley, MA, prepared by MetroWest Engineering, Inc.
- Letter of denial for LHR-08-12 #169 Grove Street, to Kathy Nagle, Town Clerk, dated 11/18/08

Submittal from the Planning Board – 30 Benvenue Street

- Letter of denial for LHR-08-01 #30 Benvenue Street to Kathy Nagle, Town Clerk, dated 9/29/08
- Behrend House (LHR-08-01), 30 Benvenue Street, prepared by Architectural Concepts, Scale ¼" = 1'0"
- Page 1- First Floor Plan, revised 9/25/08
- Page 2- Second Floor Plan, revised 9/25/08
- Page 3- Third Floor Plan, revised 9/25/08
- Page 4- Foundation Plan
- Page 5- Front Elevation
- Page 6- Left Elevation
- Page 7- Rear Elevation
- Page 8- Right Elevation
- Dean Behrend, 30 Benvenue Street, prepared by MetroWest Engineering, Inc. - Sheet 1 of 1, Existing Conditions Plan
- Dean Behrend, 30 Benvenue Street, prepared by MetroWest Engineering, Inc. - Cover Sheet- Lot 1
- Sheet 1- Lot 1, Proposed Layout Plan, revised 02/18/08, 03/07/08, 07/10/08, 09/02/08, 11/26/08, 12/12/08
- Sheet 2- Lot 1, Proposed Grading & Utility Plan, revised 02/18/08, 03/7/08, 07/10/08, 09/02/08, 11/26/08, 12/12/08
- Sheet 3- Lot 1, Proposed Landscaping Plan, revised 02/18/08, 03/07/08, 07/10/08, 09/02/08, 11/26/08, 12/12/08
- Sheet 4- Lot 1, Proposed Detail Plan, revised 02/18/08, 03/07/08, 07/10/08, 09/02/08, 11/26/08, 12/12/08

- Analysis of Existing Aqueduct for Additional Overburden Soil & H-15 Truck Loading, prepared by Gannett Fleming, Inc.
- Dean Behrend, 30 Benvenue Street, prepared by MetroWest Engineering, Inc. - Sheet 2 of 2- MWRA Chapter 8M Permit, Proposed Grading Plan, Scale 1" = 20'
- Volume Calculations, prepared by MetroWest Engineering, Inc.
- Dean Behrend, 30 Benvenue Street, prepared by MetroWest Engineering, Inc. - Sheet 1 of 1, Proposed Erosion & Sedimentation Control Plan, Scale 1" = 20'
- Response from MetroWest Engineering, Inc. to Wellesley DPW, Engineering Division
- Hydrologic Assessment, Proposed Site Development, Benvenue and Grove Streets, Wellesley, MA, prepared by MetroWest Engineering, Inc.
- Letter from George Saraceno confirming review of application, including revisions
- Letter of denial for LHR-08-13 #30 Benvenue Street, to Kathy Nagle, Town Clerk, dated 12/24/08

On February 2, 2009, the Planning Board reviewed the petitions for 169 Grove Street and 30 Benvenue Street and, in each case, stated that

approval of this project, if granted, shall be made conditional on the satisfactory resolution of the easement relocation issue between the applicant and the Wellesley Friend Meeting. Notwithstanding our findings under LHR, the new house as proposed cannot be constructed and be compliant with the other requirements of the Zoning Bylaw without the easement being relocated as proposed.

#### Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing.

The appeal of the decision of the Planning Board to deny the application for 169 Grove Street is denied.

The appeal of the decision of the Planning Board to deny the application for 30 Benvenue Street is remanded back to the Planning Board.

The Board shall maintain jurisdiction until the Court has issued a decision on the easement relocation and the Board has reviewed same.

APPEALS FROM THIS DECISION,  
IF ANY, SHALL BE MADE PURSUANT  
TO GENERAL LAWS, CHAPTER 40A,  
SECTION 17, AND SHALL BE FILED  
WITHIN 20 DAYS AFTER THE DATE  
OF FILING OF THIS DECISION IN THE  
OFFICE OF THE TOWN CLERK.

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Richard L. Seegel, Chairman

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J. Randolph Becker

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Cynthia S. Hibbard

cc: Planning Board  
Inspector of Buildings  
lrm