

**ZONING BOARD OF APPEALS**

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

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ZBA 2009-35  
Appeal of Appian Corp.  
30 Benvenue Street

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Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, June 11, 2009 at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the Appeal of APPIAN CORP. pursuant to the provisions of Section XVID and Section XXIV of the Zoning Bylaw of the decision of the Planning Board for Large House Review for 30 BENVENUE STREET.

On May 26, 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 Adam Lowenstein. Also present was Dean Behrend (the "Appellant").

The Board said that the Appellant must show how the Planning Board exceeded its authority under the bylaw. The Board said that is the only basis of the appeal.

Mr. Lowenstein said that Mr. Behrend is appealing conditions of the Planning Board decision for Large House Review.

Mr. Lowenstein said that there is a condition that concerns the relocation of a driveway easement on the property. He said that the condition specifies that if the fence is relocated, it cannot be moved closer to the border of the property. The Board said that the Planning Board is requiring that the vegetated border be maintained.

The Board read condition #2 of the Planning Board decision. The Board asked how that condition violated Section XVID, Subsection E, Standards of Criteria for Review of the Zoning Bylaw. Mr. Lowenstein said that it violated the bylaw by not permitting the fence to be moved closer to the border. He said that is essentially a taking of the property. He said that the Planning Board could have required that the vegetated border be kept or restored in a certain condition if the fence is moved. The Board said that the purpose of Large House Review is to keep vegetation in place, not to restore it. The Board said that subject was discussed at length at Town Meeting and at many public hearings for the Large House Review bylaw.

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The Board read an excerpt from Section XVID of the Zoning Bylaw. The Board said that the Planning Board was within its authority when it placed the condition to preserve the vegetated border.

Mr. Lowenstein said that the other condition that they are appealing is the one that states that if the fence is moved, the entire fence must be replaced. He said that they were hoping to relocate the existing fence in its current condition. The Board said that the fence has been there for many years and is uniform. Mr. Lowenstein said that the fence would remain uniform if it was relocated.

The Board asked if Mr. Lowenstein was referring to the last sentence of condition #2. The Board said that the condition states that if a fence panel is replaced, it must be replaced with a material that is similar in style and material to the existing fence.

The Board asked how the Planning Board violated the bylaw by placing the conditions on its decision.

Mr. Lowenstein said that they consider not allowing the owner to use a portion of his property as essentially a regulatory taking of the property. The Board said that is not a Zoning issue.

Mr. Behrend said that he had proposed to improve the buffer between the abutters and his property. He said that he proposed to improve the appearance on both sides of the property. He said that the Planning Board decision does not allow him to improve his property and enhance the buffer. He said that it is an undue hardship to not be able to improve one's own property. The Board said that the Planning Board decision is requiring that Mr. Behrend maintain the trees and landscaping. The Board said that the bylaw specifically gives the Planning Board that authority.

The Board said that Mr. Behrend set the lot lines when he subdivided the property and now has to deal with the Zoning requirements for the lots.

Mr. Behrend said that conditions placed on the property by the MWRA make this a unique situation. The Board said that Mr. Behrend knew that there would be restrictions when he bought the property.

The Board said that the Planning Board decision and the decision of the Zoning Board must be filed with the Court.

### Statement of Facts

The subject property is located at 30 Benvenue Street, in a 10,000 square Single Residence District.

The Petitioner is appealing the decision of the Planning Board for Large House Review.

#### Submittals from the Planning Board – 30 Benvenue Street

- LHR-08-13 #30 Benvenue Street Conditional Approval, stamped 5/6/09
- Proposed Sketch Plan, Sheet 1 of 1, dated 3/20/09, prepared by Metrowest Engineering, Inc.

- Lot 1 Proposed Grading and Utility Plan, Sheet 2 of 4, dated 1/27/08, prepared by Metrowest Engineering, Inc.
- Lot 1 Driveway Section Plan, Sheet 1 of 1, dated 3/16/09, prepared by Metrowest Engineering, Inc.
- Letter to Chris Chan & Meghan Jop, dated 4/13/09, from David J. Himmelberger
- Complaint, Superior Court Dept C.A. Docket No.: 08 02310, Exhibit A
- Motion for Summary Judgment, Superior Court Dept C.A. Docket No.: 08 02310, Exhibit B
- Affidavit of Dean Behrend, Superior Court Dept C.A. Docket No.: 08 02310
- Memorandum In Support of Plaintiff's Motion for Summary Judgment, Superior Court Dept C.A. Docket No.: 08 02310
- Memorandum from Captain Marchetti, Wellesley Fire Department, to Meghan Jop, dated 3/31/09
- Application for Large House Review and Affidavit, Appian Corp., dated 9/29/08
- LHR-08-13 #30 Benvenue Street, Denial, stamped 12/24/08
- Letter of Appeal, dated 12/31/08 from Appian Corp. to Town Clerk
- ZBA 2009-04, Petition of Appian Corp., stamped 2/19/09
- Design Review Record Findings, dated 11/13/08
- First Floor Plan, dated 12/14/07, prepared by Architectural Concepts
- Second Floor Plan, dated 12/14/07, prepared by Architectural Concepts
- Third Floor Plan, dated 12/14/07, prepared by Architectural Concepts
- Foundation, dated 12/14/07, prepared by Architectural Concepts
- Front Elevation, dated 12/14/07, prepared by Architectural Concepts
- Left Elevation, dated 12/14/07, prepared by Architectural Concepts
- Rear Elevation, dated 12/14/07, prepared by Architectural Concepts
- Right Elevation, dated 12/14/07, prepared by Architectural Concepts
- Existing Conditions Plan, Sheet 1 of 1, dated 1/7/08, prepared by Metrowest Engineering, Inc.
- Proposed Erosion and Sedimentation Control Plan, Sheet 1 of 1, dated 8/30/08, prepared by Metrowest Engineering, Inc.
- Memorandum to George Saraceno from Ethan Parsons, dated 11/17/08, regarding Lot 1 (30 Benvenue Street), Large House Review (LHR 08-13)
- Memorandum from George Saraceno to Ethan Parsons, dated 11/17/08, regarding Lot 1 (30 Benvenue Street), Large House Review
- Lot 1 Cover Sheet, dated 1/17/08, prepared by Metrowest Engineering, Inc.
- Lot 1 Proposed Layout Plan, Sheet 1 of 4, dated 1/17/08, prepared by Metrowest Engineering, Inc.
- Lot 1 Grading and Utility Plan, Sheet 2 of 4, dated 1/17/08, prepared by Metrowest Engineering, Inc.
- Lot 1 Proposed Landscaping Plan, Sheet 3 of 4, dated 1/17/08, prepared by Metrowest Engineering, Inc.
- Lot 1 Proposed Detail Plan, Sheet 4 of 4, dated 1/17/08, prepared by Metrowest Engineering, Inc.
- Volume Calculations, dated 8/25/08, prepared by MetroWest Engineering Inc.
- Massachusetts Water Resources Authority Permit #1192, dated 8/12/08
- Proposed Access Driveway Volume Calculations, dated 8/7/08
- MWRA Sudbury Aqueduct Wellesley, MA, dated June, 2008, prepared by Gannet Fleming Inc.

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- Hydrologic Assessment Proposed Site Development Benvenue and Grove Streets, Wellesley, MA, dated September, 2008, prepared by Metrowest Engineering, Inc.
- Photograph
- Aerial Photograph
- Letter from Frank L. Tarantino to Planning Board, dated 3/18/09
- Letter from Frank L. Tarantino to Zoning Board of Appeals, dated 6/8/09
- Letter from Mr. & Mrs. Ralph O. West to Planning Director, dated 3/14/09

### 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 for Large House Review is denied.

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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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David L. Grissino

cc: Planning Board  
Inspector of Buildings  
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