

**ZONING BOARD OF APPEALS**

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482

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WALTER B. ADAMS
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January 6, 2022

7:15 pm

Business Meeting/Public Hearing
Juliani Meeting Room, Town Hall

Zoning Board of Appeals Members Present: J. Randolph Becker
Robert W. Levy
David G. Sheffield
Walter B. Adams

BUSINESS MEETING**ZBA 2019-61 SEB WELLESLEY LLC, 136-140 WORCESTER STREET**

Mr. Becker discussed letters from MassHousing regarding the project at 136 to 140 Worcester Street and disqualification of Geoff Engler from participation in the program.

Mr. Levy said that the Board granted a Comprehensive Permit on November 20, 2020 for the property at 136-140 Worcester Street.

Christopher Heep, Town Counsel, said that subsequent to issuance of the Comprehensive Permit (CP), the Board and the town learned of irregularities in the process and notified MassHousing, who revoked the site approval letter, which is a prerequisite for a Chapter 40B project. He said that the permit cannot be acted upon, still exists, and the appeal period has expired. He said that the question before the Board is whether it should schedule a public hearing in the future to discuss whether the permit should be revoked. He said that the Applicant should be notified if a hearing is scheduled.

Mr. Becker questioned whether the permit is automatically stopped since the Project Eligibility Letter (PEL) was revoked. Mr. Levy and Mr. Heep said that in their experience, this is uncharted territory. Mr. Heep said that a PEL is a jurisdictional prerequisite for a CP. He said that the Applicant is not in a position to move forward with the permit. He said that calling a hearing to revoke a permit is extraordinary but this would be reasonable since the permit was taken away by the permitting agency. Mr. Levy said that the project was issued under false pretenses.

Mr. Adams said that because the project was approved by MassHousing, the Board did not have adequate grounds to deny it. He said that he did not think it was an appropriate project, given the size, location and interface with Worcester Street.

Mr. Levy discussed valid grounds to revoke. He said that the project no longer has two of three statutory prerequisites.

Mr. Becker questioned the relationship of this project to a list of other projects that Mr. Engler is involved in. Mr. Heep said that MassHousing revoked project eligibility for the 136 to 140 Worcester Street project. He said that for all of the other projects that he is involved with MassHousing, Mr. Engler has an opportunity to certify in writing that no false statements have been made. He said that it is an opportunity to cure any issues that exist and Mr. Engler has provided it.

The Board discussed reconvening a public hearing. Mr. Heep said that there are unresolved issues concerning the paper road that was discussed in the decision and conditions.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to convene a public hearing for the purpose of discussion and resolution of whether the Board should take action with respect to facts that came to light after the public hearing, and to give the Petitioner a chance to say why CP should not be revoked.

ZBA 2021-42, GERALDINE JARVIS, 26 HARRIS AVENUE

Mr. Becker said that the Applicant withdrew the request to modify a prior modification of a special permit.

PUBLIC HEARING

ZBA 2021-87, BLAR VIK LLC, 34 BAY VIEW ROAD

Present at the public hearing was David Himmelberger, Esq., who said that the petition was continued from November 4, 2021, for an application for a special permit for a pre-existing nonconforming house with a 10 foot setback, on a lot with 70 feet of frontage. He said that the Board suggested that a special permit was not the most appropriate relief and suggested that the Applicant consider applying for a variance, due to topography and shape of the lot, to center the house. He said that further suggestions were to change the garage doors, step the garage back and show furnishings on the floor plans.

Mr. Himmelberger requested that the request be amended to a variance, which will have to be noticed. He asked that the petition be continued to March 3, 2022.

Mr. Sheffield moved, Mr. Levy seconded the motion, and the Board voted unanimously to continue the petition to March 3, 2022.

ZBA 2021-88, PETER WELBURN, 20 CUSHING ROAD

Present at the public hearing was David Himmelberger, Esq., said that the request is for a variance to locate two air conditioning condensers (ac) in the left side yard setback. He said that the petition was on the November 4, 2021 public hearing agenda at which time the Applicant proposed siting the ac units in the right side yard setback. He said that the Applicant was unaware that the neighbor on the right side had an issue with that proposal. He said that subsequent to that, they found a notch on the left side of the house where they could place the unit with a 4.7 foot setback. He said that the house is located on a 5,310 square foot lot in a SR 20 District. He said that the neighbor on the left side submitted an email to the Zoning office stating that they have no problem with the proposed location of the ac on the left side. He said that the Board noted at the previous hearing that the cut sheets for the condensers show that they are among the quietest that are currently manufactured. He requested that the Board grant a variance for location of two ac in the left side yard setback.

Mr. Levy confirmed that the request is in accordance with the plan dated December 2, 2021.

Mr. Himmelberger said that the setback is 4.7 from the edge of the property, which is shown as a dotted line on the plot plan. He said that there is a further easement past the dotted line. He said that the setbacks are 6.3 feet and 7.2 feet from the corners of the house.

Mr. Levy asked if it is an exclusive easement. Mr. Himmelberger said that it is a slightly elevated driveway from the left side neighbor and there is a retaining wall.

Mr. Levy said that the purpose of the bylaw is sound mitigation. He asked if there will be any sound mitigation. Mr. Himmelberger said that there are plantings along the edge of the driveway easement.

Mr. Levy asked about the hardship. Mr. Himmelberger said that it relates to shape of the lot.

Mr. Becker said that, in terms of mitigation, it should be acknowledged that the unit selected is the lowest decibel rating for that size.

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

Mr. Becker read the Planning Board recommendation.

Mr. Levy asked about intent to add sound mitigation for the units. Mr. Himmelberger said that there are plantings along the outer edge of the easement.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to grant a variance, finding that literal enforcement would involve substantial hardship, financial or otherwise, to the petitioner owing to circumstances relating to the shape of such land, which does not generally affect the zoning district in which it is located, the hardship has not been self-created, and desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw, subject to a condition that the units be the same as the ones shown on the manufacturer's specification sheets dated April 2020, namely American Standard, 4A7V80241000B.

ZBA 2022-03, DANA HALL SCHOOL, 28 HAMPDEN STREET

Present at the public hearing were David Himmelberger, Esq., and Charles Breslin, COO, Dana Hall School. Mr. Himmelberger said that the request is for renewal of a special permit, pursuant to Section 2 A 8 (b) of the Zoning Bylaw to allow the premises at 28 Hampden Street to be used as a two family dwelling to house faculty, which is a use not allowed by right in a Single Residence District.

Mr. Himmelberger said that the conditions remain the same. He said that there are faculty living there, there were no issues with the neighbors or neighborhood, and no signage. He said that there is sufficient off-street parking and the house is compliant with Building and Fire Department regulations.

Mr. Himmelberger said that the request is for another three year renewal.

Mr. Becker asked if there is any particular issue caused by the misalignment in time between the date of the permit and the school year. Mr. Breslin said that faculty housing is renewed on an annual basis, from July 1st to June 30th. He said that this is the second or third renewal of the special permit and they have not had an issue.

Mr. Sheffield said that the property appears to be well maintained.

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

Mr. Becker read the Planning Board recommendation.

Mr. Sheffield moved, Mr. Levy seconded the motion, and the Board voted unanimously to approve renewal of the special permit, subject to the same terms and conditions, including expiration of 3 years from date of time stamp.

ZBA 2021-56, EDWARD & MICHELLE JACOBS, 97 RUSSELL ROAD

Present at the public hearing were Charles Goodhue, Esq., Ed Jacobs, the Petitioner, and Jason Indelicato, Construction Manager.

Mr. Becker said that the lot area is less than 10,000 square feet, which is less than what is required in the district and has 20 feet of frontage where 60 feet is required. He said that the placement of the existing structure on the lot is challenging. He said that there is no defined front yard, and the side yards are 5 and 10 feet where 20 feet is required. He said that the TLAG and lot coverage are within the limits. He said that a mix of variances and special permits are required. He said that outstanding issues from the previous hearing concerned the Construction Management Plan (CMP) and the garage.

Mr. Goodhue said that they were before the Board on October 7, 2021 and got feedback. He said that they submitted additional applications for relief for air conditioner condensers (ac) and retaining walls. He said that they submitted a CMP and information regarding specifications of the ac. He said that they have not gone to the Design Review Board (DRB) yet for the retaining walls, as they were advised by Michael Grant, Building Inspector, that they can do that after coming before the ZBA.

Mr. Goodhue said that the Planning Board revised its recommendation. He said that they had concerns at the previous hearing about the request for relief from the requirement to stay 10 feet from town land. He said that this is a challenging lot that borders on town land. He said that in the recently updated Planning Board recommendation, their only concern is that the project go to the DRB and include stormwater information if it is not adequately addressed by the ZBA and address construction management.

Mr. Goodhue said that Ms. Jacobs spoke with the direct abutting neighbor on the north side of the property about the ac and there was no opposition. He said that they do not have a favorable letter from the neighbors but can request one if the Board thinks that it is necessary.

Mr. Levy discussed concerns about getting approvals from other Boards. He said that the ZBA is typically the board of last resort. Mr. Goodhue said that the WPC told them to go to the ZBA and then come back to them.

Mr. Becker said that outstanding issues concern the 10 foot setback from town land and justification for it. Mr. Jacobs said that the setback of the garage on the south property line is partly dictated by the adjacent neighbor's desire to park a car on the street because they have no off-street parking. He said that his driveway is adjacent to where the neighbors park their car. He said that it is expected that they need space in the driveway in front of the garage because they have to come around a parked car to get into their driveway. He said that the carport is pushed as far as possible to allow them to get the cars into the carport. He said that the length of the driveway is adequate to provide for entry into the carport because there is a car that is parked in front of the end of their driveway. He said that driving out of the garage, you have to circumvent a car that is parked in the street in front of the driveway, which would not be possible if the carport was positioned where the existing house is.

Mr. Becker asked that Mr. Jacobs talk about the perpendicular direction, to and fro towards Morses Pond. Mr. Jacobs said that the topography does not allow for them to pull further away from where the existing footprint is towards the pond because there is a sharp drop off.

Mr. Becker said that, looking down Russell Road, you do not see many garages. He said that the existing house encroached on town land for decades and he did not see an effort to redress that. He said that the new house does not have the same encroachment issue. Mr. Jacobs said that they will be completely removing the encroachment on town property. He said that the issue is the encroachment on town setback, which has been pre-existing. Mr. Becker said that the request is for a variance and pre-existing does not have any standing for a variance. Mr. Jacobs said that they have a hardship in that it is the neighborhood's desire to get as many cars off of the street as they can. He said that, as a result, they are motivated to provide for parking. He said that they were not able to put a garage in the main house because of the topography. He said that four of the razed and newly rebuilt homes on the street were able to accommodate garages in the main house structure. He said that they are not able to do that because of the topography.

Mr. Becker said that the only way to get the 10 feet is to either have a smaller garage or no garage.

Mr. Levy said that two of the plans that were submitted were not signed.

Mr. Levy read an excerpt from comments from the Town Engineer. Mr. Jacobs said that he met with the Town Engineers today and are in agreement as to what needs to be done and that DPW should review the area once it is secured. He said that there is also a question about a 14 inch water main that is 7 feet under the existing structure. He said that one of the surveys shows its location under the portion of the encroaching structure that does not have a basement. He said that they agreed to have DPW review the poles and protective tape area before putting any shovels in the ground.

Mr. Becker confirmed that the Petitioner is providing parking for their neighbors. Mr. Jacobs said that the land is on the road on the private drive in front of the neighbor's property and they have traditionally parked there. He said that he does not have any authority to say that they can park there but it is traditionally what they have done and they desire to continue to do that. Mr. Levy discussed the possibility of creating an easement. Mr. Jacobs said that he is happy to accommodate that but it does create a situation where he cannot pulled directly out, which is fine. He said that it will be difficult if they do not have distance between where the neighbor parks their car.

Mr. Adams said that the Board previously raised issues about the proposed garage and the almost two story street face, which seems unnecessary. Mr. Jacobs said that nothing changed. He said that they have kayaks and sailboats that they would like to suspend with ropes during the winter.

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

Mr. Becker discussed possible conditions and issues to be discussed. He discussed closing the public hearing and holding a business meeting to vote approval versus continuing the public hearing. Mr. Levy suggested that the hearing be kept open to allow other boards to submit comments. The Board discussed continuing the hearing to a zoom meeting.

Mr. Adams said that the updated CMP did a thorough job of identifying how they can build the building while reasonably protecting that construction activities will not spill into the pond. He said that he had not seen the DPW comments that were submitted this afternoon.

Mr. Becker discussed required relief as a variance for the side yard setbacks, north and south, a variance at 10 feet from town land, a variance for the ac in the setback, and a special permit for the retaining walls. He said that the CMP and Mr. Hickey's comments would factor in the conditions and be addressed in the permit.

Mr. Goodhue requested that the hearing be kept open to allow more time to review Mr. Hickey's comments. He said that his client is comfortable that he can make DPW comfortable with the project and its unique variables such as the Water Department plans, parking, staging, and erosion protection on the south side of the property. He said that they still have to go to DRB on the retaining walls and the WPC.

Mr. Becker said that the hearing will be continued. He said that in the meantime, the Board will put together a draft decision and conditions. He said that the Board would like to have the ZBA be the last process before closing the hearing. Mr. Goodhue said that they will submit their application to the DRB. Mr. Becker said that the WPC wants the project to come back after the ZBA has rendered its decision because they could not define hardship and wanted to see what the ZBA would do before they took action. He said that the WPC does not have a definition of hardship.

Mr. Levy moved, Mr. Adams seconded the motion, and the Board voted unanimously to continue the petition to March 17, 2022 at 7:30 pm for a remote zoom hearing.

Mr. Levy said that the two plans that were not signed should be signed. He asked that copies of any permits that are issued be submitted to the ZBA.

ZBA 2022-01, MICHAEL CHAMMAS, 1005 WORCESTER STREET

Present at the public hearing was Romeo Adams, Esq., who said that the request is to renew a special permit allow the use to sell used cars on the premises. He said that the Board approved the initial special permit for the sale of up to six cars. He said that Mr. Chammas has strictly maintained the specifications of Board. He said that things have been going well. He said that Mr. Chammas has been providing motor repair and services to the Wellesley community for almost 40 years. He said that the approval of the special permit has allowed him to expand to selling used cars, which are very valuable in today's market. He said that the request is for relief to allow Mr. Chammas to continue to provide those services. He said that there have been no complaints and things are well organized. He said that gas sales, auto repairs and auto sales are well coordinated.

Mr. Sheffield said that the striping was done. He said that there was additional mention of selling parts that was not included in the previous approval. Mr. Adams said that the parts are for repairs, not for sale as a parts dealer. Mr. Becker said that the current special permit is for a use to sell autos, which is a use that is not allowed by right in the zoning district.

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

Mr. Becker read the Planning Board recommendation.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to grant renewal of the special permit, subject to the same terms and conditions and time frame.

ZBA 2202-02 HUNNEWELL LAND TRUST, 891 WASHINGTON STREET

Present at the public hearing were Walter Hunnewell, Jr. and Tom Hunnewell, representing the Hunnewell Land Trust, the Petitioner.

Walter Hunnewell, Jr. said that the initial special permit was granted in 1987. He said that the request is for renewal of the special permit to allow the detached garage apartment to continue to be used as a separate dwelling unit, which is a use not allowed by right. He said that there have been no substantive changes to the conditions of the property since the previous hearing. He said that the current tenant has lived in the

detached garage for 10 years. He said that the old colonial dwelling across the driveway from the detached garage is in much the same state as it was in its early days. He said that the cows next door continue to enjoy the use of the property's pastures.

Walter Hunnewell, Jr., said that a letter was attached to the application that provided details.

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

Mr. Becker read the Planning Board recommendation.

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

ZBA 2022-04, WILLIAM & JENNA DICKSON, 47 AVON ROAD

Present at the public hearing was William Dickson, the Petitioner, who said that the request is for a special permit/finding to build an addition on an existing nonconforming lot with nonconforming front and side yard setbacks. He said that he and his wife bought the house in 2018 and came to the Board seeking similar approval to expand up without expanding the footprint. He said that with jobs going remote, the house feels a lot smaller when they are there all day. He said that they have significant ledge issues, which is common in the neighborhood on that side of Avon Road. He said that there is no way to expand further back on the property past the 17 feet, as there is a six foot solid piece of rock that stretches the entire width of the property.

Mr. Becker identified the lot nonconformities as lot size, right side yard setback and front yard setback.

Mr. Dickson said that the plan is to continue the house back with the same side yard setbacks. Mr. Levy confirmed that the relocated ac condensers will not be in the setback area.

Mr. Sheffield asked about basement work. Mr. Dickson said that they will have to scrape back some of the rock. He said that they have already removed a substantial amount of ledge when they put in the patio. He said that the ledge towards the back left side of the house encroaches much closer to the house and pulls further away towards the other side. He said that the goal is to dig and put as much crawl space as they can.

Mr. Sheffield said that drawing #4 shows what will probably not be a full basement. Mr. Dickson said that they have a markup that shows a couple of interior changes that show that as a four foot crawl space. He said that it may get smaller.

Mr. Sheffield asked about water runoff from the slope to the house. Mr. Dickson said that underneath the whole yard is ledge. He said that they already have runoff. He said that they regraded the backyard. He said that it used to be a large hill where they stripped some land away. He said that the backyard holds a lot more moisture now. He said that the goal is that when they backfill, it will slope more towards the yard portion and keep more of the water up top. Mr. Sheffield said that they may need to put extensive underdrains at the back edge of the new wall. Mr. Dickson said that they expect to have to put in an exterior perimeter French drain around the entire structure. He said that there is an existing drywell in the side yard that the French drain can connect to.

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

Mr. Becker read the Planning Board recommendation.

Mr. Dickson said that the drywell in the side yard catches some of the rain water. He said that water sheds fairly quickly because of the slopes on either side. He said that the backyard retains most of the moisture. He questioned whether building over ledge will change the runoff situation. He said that they are looking to hire a geo technical engineer to deal with the foundation drainage. He said that they will put in a new drywell if they have to do that.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to approve a special permit.

ZBA 2022-06, JUSTIN NYWEIDE, 47 RADCLIFFE ROAD

Present at the public hearing was Justin Nyweide, the Petitioner, who said that the request is for a variance to put a generator in the right side yard setback, due to the soil conditions and topography of the rear yard. He said that they abut Brook Street behind them, which is approximately 20 feet higher where water runs off to his property. He said that the runoff causes issues with water levels. He said that the amount of trenching and re-grading to provide an adequate location for the generator would be cost prohibitive. He said that the request is to locate the generator on the right side, which is naturally higher than the back and left sides of the house.

Mr. Nyweide said there are existing ac condensers at the proposed location of the generator. He said that the neighbors on the right side at 43 Radcliffe Road are ok with the plan. He said that it will be a very quiet generator in terms of decibel levels. He said that there are 15 foot high arbor vitae in between the properties, near the neighbor's garage.

Mr. Sheffield confirmed that the bay window will be coming off and the drawings will be changed to not have a bulkhead.

Mr. Levy asked when the ac condensers were installed. Mr. Nyweide said that there was an existing condenser there when he moved in in 2013. He said that they replaced an existing condenser in 2016. He said that he was not aware of any relief granted for the condensers. Mr. Levy said that the existing ac condensers are located in the side yard setback.

Mr. Sheffield confirmed that the generator was not proposed at the back because of the windows in the living room.

Mr. Levy said that the rear of the property seems to be extensive. He asked if there was any place in the rear of the property to put the generator. Mr. Nyweide said that the main reason for the generator is for the water in the basement that comes from Brook Street. He said that they will have a lot of piping and a French drain across the back and drywells in the front. He said that the purpose of the generator is to keep the sump pumps going.

Mr. Sheffield asked about frequency of testing the generator. Mr. Nyweide said that it runs once a week for 10 to 15 minutes. He said that the pumps are needed because of the volume of water.

Mr. Sheffield said that the generator will be very prominent. He asked if the plan is to take out the tree at the corner. Mr. Nyweide said that the plan is to keep the tree. He said that there are arbor vitae half way on the other side of the property line and he plans to plant on the sides.

Mr. Levy said that it is a very large back yard. Mr. Nyweide said that they had to regrade it when they moved in. He said that they are trying to have play space for their kids and a patio. He said that the amount of regrading would be a hardship. Mr. Levy said that the generator is a small unit.

Mr. Becker read the Planning Board recommendation.

Mr. Levy asked about the unit dimensions. Mr. Nyweide said that it will be 48 by 25 by 29 inches.

Mr. Levy said that the Applicant has to show a hardship and he was not convinced that the generator could not go in the back yard. Mr. Nyweide said that the main reason is the piping and regrading that is required to reroute the water that is coming from Brook Street. He said that they would have to raise it incrementally higher. Mr. Becker said that the generator has to be raised but that does not mean that the whole back yard has to be raised. He said that there is 25 feet at the right rear corner. He questioned why there was not enough space back there. Mr. Nyweide said that he was told that there is a window requirement. He said that the kitchen windows are there. Mr. Levy said that it is not a large unit and it will not run constantly.

Mr. Becker said that the decibel levels are consistent with ac condensers. Mr. Levy said that generator testing is often done in the middle of the night or early in the morning.

Mr. Sheffield said that the area shown on Floor Plan A1 adjacent to the covered porch would not be in the way of windows and might be a logical place to put the generator. Mr. Nyweide said that the plans were to have the barbecue in that area. He said that the kids will spill out off the porch. He said that it will likely be a built-in barbecue.

Mr. Levy said that he thought that the Applicant could find a compliant location. Mr. Nyweide said that they chose a quieter model and they were hoping to put it at a higher level. Mr. Levy said that he did not see the hardship. He said that he did not see that the high water table would prohibit putting the generator in a location that is not within the setback. Mr. Nyweide said that they will have to regrade the back yard. Mr. Levy said that it is a small unit. Mr. Becker said that they will only have to elevate 2 feet by 4 feet for the generator. Mr. Nyweide said that it will have to go on an elevated cement pad to avoid all of the lines that have to go out without interfering with the piping. Mr. Sheffield said that if it was located next to the covered porch, it would not require any of that.

Mr. Sheffield said that the proposed location is on a corner that is prominent to the street and the neighborhood. He said that it will be in your face. Mr. Nyweide said that the property is elevated four feet from the street with a retaining wall. He said that the tree plus and the shrubbery protects that area to the point that you cannot see the condensers.

Mr. Becker discussed the Zoning Bylaw and authorization for granting variances. He said that there was nothing submitted that addressed soil conditions. He said that the Board is willing to consider a variance as long as it sees that there is no other way to do it.

Mr. Levy said that the Board is charged with trying to conform with the bylaw as much as possible. He said that the Board tries to look for alternatives that do not require relief. He said that it looks like there are alternative locations that would not require relief from the Board. Mr. Becker said that it is not clear to the Board which of any of the three standards for granting a variance would justify it. Mr. Nyweide said that the main issue is the topography. Mr. Becker said that the Board needs to see the topography. Mr. Levy said that issues with the topography need to relate to the request.

Mr. Nyweide said that they focused on not having anything in the front yard. He said that the proposed location was based on the shrubbery and the tree. He said that it is a very narrow area. He said that they wanted to stay away from the kitchen windows.

Mr. Becker discussed moving forward. He said that the Board was not persuaded that this can meet the variance standards.

Mr. Levy said that the Applicant should try to find a place where the generator will be compliant.

Mr. Nyweide asked that the Board allow the petition to be withdrawn without prejudice.

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

ZBA 2022-07, JEFFREY LONG & JENNIFER MACARCHUK, 9 CEDAR STREET

Present at the public hearing were Jennifer Macarchuk, the Petitioner, and Kevin Conover, Land Surveyor.

Mr. Conover said that the request is for a special permit/finding for the construction of an addition. He said that there is a deck at the rear of the existing house. He said that the proposal is for a 22 by 22 foot addition with a deck off of the back. He said that lot is located in a SR 10 district where 60 feet of frontage is required. He said that it is a pre-exist nonconforming lot with a nonconforming structure that does not meet setback requirements. He said that at the closest point, the existing house is 10 feet off of the property line. He said that the addition will be in excess of that and will not increase the nonconformity. He said that the addition will conform to lot coverage and land area regulations. He said that the Petitioner has letters from neighbors at 7 and 11 Cedar Street, who are in favor of the project. He said that they will not increase the nonconforming nature of the pre-existing nonconforming house.

Mr. Sheffield said that the ridge line steps down towards the rear of the property.

Mr. Becker asked about the shed that is on town property. Ms. Macarchuk said that the shed was there when they bought the property. She said that a survey from 1999 shows that there shed was there at that time. Mr. Levy said that the Planning Board recommended that the Board impose a condition that the shed be removed from the encroachment. Mr. Conover said that the shed does not have a permanent foundation and the Applicant is in favor of relocating it.

Mr. Levy moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to approve a special permit, subject to a condition that the shed that is located on town land be removed from town property.

ZBA 2022-08, ILYA GLIK, 59 HIGH LEDGE AVE

Present at the public hearing was Ilya Glik, the Petitioner, who said that he submitted a letter describing the project. He said that the request is to increase the side deck that is currently small and dilapidated. He said that the regulations allow for a 5 by 5 foot deck and he would like to increase it slightly along the side of the house to make space for storage and outside space.

Mr. Sheffield confirmed that the garage is not used for an automobile. Mr. Glik said that it is basically a storage unit that he intends to remove.

Mr. Glik said that he looked at putting the deck at the back but there is no door to access it there.

Mr. Becker discussed the standards for granting a variance under the Zoning Bylaw. He said that fundamentally this is a square lot that is flat and does not appear to have any soil condition issues.

Mr. Levy said that the house is conforming and the proposed deck creates a new nonconformity. He said that he did not see what the statutory hardship is. Mr. Becker said that, under the law, the Board cannot grant a variance for the proposed addition. Mr. Levy said that a variance is not discretionary and is not based on whether the Board likes it or thinks it is appropriate. He said that the Board only has the authority to grant a variance if it is necessitated by the shape, topography or soil condition of the lot.

Mr. Glik said that his issue is that it is a very small attachment. He questioned why it is a big issue for the town in terms of construction. He said that it is not an addition and does not create any kind of hazards. Mr. Levy said that the ZBA is a quasi-judicial board that has a set of rules that it has to apply. He said that if the project does not fit within the rules, the Board has no authority to grant relief. He said that the proposed deck looks benign but the Board does not have authority to grant approval of it. Mr. Becker said that the Board cannot grant the relief even if it wanted to.

Mr. Glik asked if any relief could be granted. Mr. Levy said that the Board has to make a finding that relief is needed as a result of one of the three standards for a variance.

Mr. Glik said that his house is small and he cannot build the deck at the back because there is no door. He said that the proposed change is small. He said that the existing porch is in disrepair and has to be replaced. Mr. Becker said that the existing porch meets the exemption that allows a 25 square foot porch in the side yard setback. He said that it is not required to be 5 feet by 5 feet.

Mr. Becker said that if people object to the Zoning Bylaw, they can go to the Planning Board to request a change to it.

Mr. Levy said that the only existing nonconformity is the lot size. He said that the setbacks are compliant, except for the garage.

Mr. Becker discussed the options for moving forward.

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

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

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Mr. Becker said that there was a request to continue the petition to February 3, 2022. Mr. Levy said that he would have to recuse himself because of a professional affiliation with the property owner. Mr. Sheffield moved, Mr. Becker seconded the motion and Mr. Sheffield and Mr. Becker voted in favor of continuing the petition to February 3, 2022.

As there was no further business to come before the Board, the hearing was adjourned at 10:00 pm.

Respectfully submitted,

Lenore R. Mahoney
Executive Secretary