



**ZONING BOARD OF APPEALS**

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February 2, 2023  
Kingsbury Room, Police Station  
7:30 pm

Zoning Board of Appeals Members Present: J. Randolph Becker  
David G. Sheffield  
Derek B. Redgate

**BUSINESS MEETING**

**ZBA 2021-21, DANA ANGELO, 8 ABBOTT STREET**

Mr. Becker said that 8 Abbott Street has requested extension to a special permit due to extenuating circumstances caused by Covid and its impact on the supply chain and construction costs.

Mr. Becker said that the Board can grant extension of the special permit up to two years.

Present at the Business Meeting was David Himmelberger, Esq. Mr. Becker asked if the project will commence in the next few years. Mr. Himmelberger said that he spoke with his client, who indicated that he has every confidence that he can move forward in that time frame. He said that he had trouble pulling the project together during the past two years due to the reasons that Mr. Becker mentioned.

Mr. Sheffield asked if the Applicant anticipates any design changes due to changes in construction costs. Mr. Himmelberger said that the prior decision will be adhered to.

Mr. Redgate moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to approve extension of Special Permit, ZBA 2021-21, for a period of two years.

**REVISED PUBLIC HEARING**

**ZBA 2022-65, JADEN & LARA CRAWFORD, 15 RICE STREET**

Present at the public hearing were Jaden and Lara Crawford, the Petitioner.

Mr. Crawford said that they bought their home at 15 Rice Street in 2010. He said that when they bought the house, it had its current air conditioning system. He said that a neighbor filed a complaint in 2012 with the

Building Inspector, alleging that the air conditioning condenser (ac) did not meet the setback requirement. He said that they were not made aware of that complaint until March of 2022. He said that this is the third hearing that they have attended regarding the matter. He said that at the last hearing, they were asked to do a homework assignment to look into three specific questions that the Board had. He said that the Board had additional questions about sound and whether anything could be done to deal with it. He said that the need for answers to questions about sound deadening materials on the fence and amplification of sound from the concrete wall were discussed.

Mr. Crawford submitted ZBA "homework assignment" for 15 Rice Street in ZBA 2022-65. He said that his proposal is for the Board to allow a variance with the sound dampening measures that are already in place.

Mr. Crawford said that the Board asked the Crawfords to look into the availability of a stock sound proofing kit from the original equipment manufacturer. He said that the Board also asked them to look into the assertion that the existing wood and concrete structures could amplify sound, and to see if there are any reasonable dampening measures that could be installed, particularly if the existing materials could amplify sound.

Mr. Crawford said that the manufacturer does not make a stock sound proofing kit. He said that he spoke with the manufacturer and the regional distributor, who were not aware of anything except for some bespoke solutions that tend to be large and cost a lot. He said that they questioned whether they would fit, as they are generally used for commercial purposes. He said that they are typically pre-cast concrete or wood panels with acoustic dampening layers.

Mr. Crawford said that they looked into whether the existing wood and concrete structures would amplify sound or dampen it. He said that they found that there is not a lot of publically available information. He said that the closest thing that they were able to find was sound dampening measures for highway traffic noise. He said that he found two studies. He said that they were trying to find out if concrete will amplify sound and if a combination of concrete, wood and shrubbery will dampen sound. He said that the sound level are higher for highway noise than a residential air conditioner. He said that the exact composition of thickness of materials used differs between the study parameters and the materials present on the properties.

Mr. Crawford said that the second study he looked at noted that of the breakdown of sound mitigating barriers in the U.S., 44 percent of the barriers are made of concrete, almost 10 percent are made of wood, and a little over three percent are earthen berms. He said that the midpoint reductions, or distance from the wall, were approximately 2 decibels for concrete, 3 decibels for concrete and vegetation, and 6 decibels for the combination of concrete, wood and vegetation.

Mr. Crawford said that in this case, there is a wooden barrier, a concrete barrier and a combination of shrubbery and tree between the condenser and the next property. He said that the soil on the other side of the concrete wall is approximately one and a half feet higher than it is on their side of the wall.

Mr. Crawford said that there are four types of commonly used sound deadening materials. He said that the first study he looked at seemed to be more tightly controlled but focused more on wood structures. He said that the study was run with wood with no gaps and with a wooden structure that had 8 inch gaps. He said that the wall with no gaps had a sound reduction of 20 dbA while the walls with the gaps had approximately 15 dbA. He said that was about 7.5 meters from the wall, which was the smallest measurement available but also the closest to the conditions between the two properties. He said that the study with gaps is probably closer to the existing fence.

Mr. Crawford said that both studies showed that barriers do reduce sound. He said that there was no indication that the materials, including metal, amplified the sound. He said that he reached out to some colleagues who are physicists who told him that, in keeping with the Law of Conservation of Energy, it

would be impossible for sound to be amplified passing through a material unless additional energy was added to the material. He said that the wood material absorbs more sound and concrete absorbs and reflects some back. He said that the air gap between the wood and concrete creates a situation where sound is deadened passing through the wood, is reflected back from the concrete and then deadened when it hits the wood again. He said that does not take into consideration the vegetation that is on the other side of the concrete wall.

Mr. Crawford discussed sound dampening measures. He said that sound is not being amplified by what is there. He said that most of the available mechanisms for HVAC are for commercial applications. He said that mass loaded vinyl costs about \$200 a roll. He said that they are not meant to be hung outdoors. He said that there would have to be a separate wall constructed to encapsulate the mass loaded vinyl, with air gaps on either side and wood or another material on both sides of it. He said that it is butyl vinyl and they are concerned about health effects, as they grow herbs in that area. He said that if the Board determines that the existing situation is not sufficient, it is something that could be done.

Mr. Crawford said that the request before the Board is to approve the variance. He said that they bought the house in 2010, the Town was made aware of the issue in 2012, and the Crawfords were made aware of it in 2022. He said that during that time, they had done a renovation and had they known that this was an issue, they could have made very different decisions about replacing their heating/cooling systems. He said that they made every attempt to appease the neighbor and the town, and to mitigate sound. He said that they bought the house with the ac in place and it passed multiple inspections. He said that this has been before the Board for almost a year and they have been acting in good faith.

Mr. Redgate said that at the previous hearing, the Board was close to having a condition in its approval for a variance but was not comfortable with the wording that the Applicant would look into it and maybe find something from the manufacturer. He thanked the Crawfords for doing their homework and investigating what the manufacturer had available and what solutions there are. He said that he was content with the work that the Crawfords did and acknowledge that there are no cost effective kits available that provide for sound attenuation.

Mr. Sheffield said that other manufacturers have sound mitigation products. He confirmed that Lennox does not. Mr. Crawford said that he called the manufacturer, their solutions team and the regional distributor. He said that part of this could be the age of the condenser. He said that it was new in 2010.

Mr. Becker said that he appreciated the homework that the Crawfords did. He said that he hoped to see a different solution such as a chain link fence with a fabric that absorbs sound energy. He said that its reflective capabilities are low.

Mr. Crawford said that the condenser is right in front of the house and anything that they do will be very visible. He said that it is located near the stairway entrance to the basement where a wall would create access issues. He said that they thought of enclosing it but there needs to be 18 inches of space for air draft. He discussed concerns about blocking the stairway to the basement.

Mr. Becker said that the fabric that he had mentioned could be mounted on existing surfaces. Mr. Crawford said that they own the wood fence.

Mr. Redgate said that the Board at the previous hearing was looking for specifics for sound attenuation.

Mr. Becker said that the conundrum is that a lot of things went wrong between 2010 and 2022 that were not the Crawford's fault but the fact remains that there is an ac in the setback.

Mr. Sheffield said that there are a few local acoustics firms. He said that his preference would be to direct the sound vertically.

Ms. Crawford said that they have three areas that stop sound to their neighbors. She said that the land also has a difference in height, so there are four different mitigations. Mr. Becker said that with those things in place, the neighbor complained. Mr. Crawford said that this was initially a location complaint, not a noise complaint. Mr. Becker said that there are only a few options for location. He said that alternatively, there may be some way to mitigate the noise. Mr. Redgate said that the Board talked about the issues of location and sound mitigation at two previous hearings. He said that the best efforts to attenuate the sound was the piece of information that the Board needed to see to formalize the approval. He said that the Board was hoping for a concrete suggestion at the next hearing.

Mr. Crawford said that the mass loaded vinyl is an option. He said that they can replace the existing fence with a 6 foot fence that includes mass loaded vinyl. Mr. Becker said that the Board is open to other solutions that are as effective but cost less.

Mr. Becker read the Planning Board recommendation.

Mr. Crawford said that the placement of the condenser is due to the location of the air handling equipment in the attic. He said that it is not feasible to move the ac to the left. He said that they are happy to plant shrubbery but there is not a lot of room between the condenser and the wooden fence. He said that the ac needs sufficient air flow to operate. He said that they can plant vegetation in front of the ac but that would prevent noise being broadcast more towards the street.

Mr. Crawford described mass loaded vinyl as being a thick, heavy butyl vinyl. Mr. Becker said that there is a different fabric available that is not as heavy as the vinyl. Ms. Crawford said that they are happy to look at the fabric option.

Robert Fleming, 432 Washington Street, read a letter dated 1/30/23 that he submitted to the Board. (see attached)

Mr. Becker an excerpt from Section 6.2 of the Zoning Bylaw (ZBL) regarding criteria for granting a variance.

Mr. Becker said that the ZBA public hearing is not the venue to discuss issues with civil rights. He said that they are properly before a court of law. He said that the ZBA is charged with making decisions according to the ZBL.

Mr. Fleming said that the ac was originally placed partially on his property, not by the Crawfords. He said that the 40 inch distance between their house and his wall is limited. He said that he owns half of the alley. He said that in 2014, the Crawfords removed the unit from the alley onto their land, which required having technicians come in. He said that is effectively the installation of the unit. He said that according to the Building Inspector's office, permits were never pulled and inspections were never done. He questioned why they did not comply with the ZBL when they moved it. He said that it is now 1.5 feet from his property, which is unacceptable. He said that he is willing to compromise. He said that there is no basis for the Crawford's request. He said that the hardship was caused by their own negligence. He said that they should have moved it to the required setback. He said that the fact that the setback for the ac is 1.5 feet nullifies the intent of the ZBL and is detrimental to the public good. He said that if the variance is granted, it will make a mockery of the bylaws.

Mr. Becker said that the bylaw has two processes within it. He said that the first states a regulation, in this case, a setback issue. He said that the second is for those properties in town for which the requirement

cannot fit the physical nature. He said that on Rice Street, the properties on both sides of the street oftentimes meet the area requirements but are very narrow and deep. He said that with a 40 foot lot that does not comply with the ZBL cannot have 20 foot setbacks on both sides. He said that part of the bylaw is intended to account for those places that do not fit the mold. Mr. Fleming said that he cited 16 Rice Street because their lot is very similar. Mr. Becker said that they went through the same process and criteria that the Board is applying here. He said that Mr. Fleming is asking for specific dimensional requirements. He said that Mr. Fleming is not sure whether that dimension works in this case or not.

Mr. Becker said that any negotiations to come to a conclusion should be done with the Crawfords. He said that the Board does not mediate between parties. He said that the Board is at the public hearing to look at an application for a variance. He said that the Board is not empowered under the bylaw to negotiate between neighbors.

Mr. Becker said that the Board has a request for a variance, which it will evaluate in accordance with the criteria. He said that the Board will either deny, approve, or approve with conditions. He said that the Board tries to balance the needs of the town versus the individuals involved.

Shay Mark, 428 Washington Street, said that he has followed this closely as a neighbor to both parties. He said that he watched all three hearings. He said that as elected officials, it is the Board's job to apply the town bylaws in a fair and consistent manner. He said that Mr. Fleming referred to 16 Rice Street. He said that the Board should take into account where the Board has allowed for appeals of the setback in a fair and consistent manner. He said that the Crawfords brought this case forward, claiming that this is an undue financial hardship. He said that they have not provided any monetary numbers to prove that. He said that it would be in the Board's best interest and the public good to have the Crawfords come back to prove to the Board that they have looked into this and have cost estimates that show that it would be a financial burden to move the ac, as opposed to simply coming to the Board and saying that it is a financial hardship without doing any due diligence at all to prove it. He asked that the Board make a decision based on a fair and consistent manner of the process.

Mr. Becker said that the Zoning Board of Appeals members are appointed, not elected.

Mr. Redgate moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to approve a variance and make a finding that that literal enforcement of the provisions of the Zoning Bylaw 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 a new six (6) foot two-sided fence enclosure of the condenser with sound attenuation, using vinyl or a similar material of equal quality and effectiveness, shall be installed.

#### ZBA 2022-39, JADEN & LARA CRAWFORD, 15 RICE STREET

Mr. Becker said that the appeal of the decision of the Building Inspector is now moot because the Board granted a variance and therefore, there is no violation of the Zoning Bylaw.

The petition was withdrawn without prejudice.

#### ZBA 2023-01, JAMES & JENNIE LIOU, 58 CARTWRIGHT ROAD

Present at the public hearing were Brian Alim, Architect, and Jennie Liou, the Petitioner.

Mr. Alim said that the request concerns the setback subject to the 500 Foot Rule. He said that the Board previously granted a variance for a side facing garage. He said that they found that the garage will be in violation of the 500 Foot Rule. He said that the existing setback is 45.5 feet. He said that the survey was revised by a new surveyor and shows a change of 6.9 feet in the setback.

Mr. Alim said that the property is located in wetlands and on a scenic road. He said that the project got approval from the Wetlands Protection Committee (WPC). He said that work has already begun at the back of the house.

Mr. Alim said that the Petitioner originally asked for relief for 19 feet. He said that they are now asking for a 15 foot addition that would require a variance for 10.6 feet into the 500 Foot Rule.

Mr. Becker said that the proposed plot plan shows a front yard setback of 26.5 feet, which violates the 500 Foot Rule and the 30 foot front yard setback requirements. Mr. Alim submitted a revised plot plan that shows a 30.5 foot front yard setback and revised architectural plans.

Mr. Alim said that they are requesting relief for Option A shown on the revised architectural plans. He said that the variance would be for 10.6 feet.

Mr. Alim said that there are water issues that drove the decision to make it a side facing garage. He said that there are topography issues, the property is located in wetlands, and the road conditions are poor. He said that water weeps off of the road onto the current driveway location. He said that the proposed garage will be slid over to allow for grass and plantings at the front to mitigate some of the water issues that are occurring on the site.

Mr. Sheffield confirmed that the violation of the 500 Foot Rule is 10.6 feet. He said that what appears to be a street on the side is Town land, not a public way. Mr. Alim said that it is water pump station.

Mr. Redgate confirmed that the previously granted relief was for a side facing garage.

Mr. Alim discussed the basis for the variance request. He said that topography is an issue because across the street is a slope where water runs off and pools on Cartwright Road, which is not a maintained road. He said that water runoff goes directly onto the property at 58 Cartwright Road. He said that there is an approximately 20 foot drop off from the front of the property to the back. He said that the soil conditions and topography cause water to pool in the driveway and freeze in the winter. He said that they will install various water mitigation measures.

Mr. Sheffield asked if a drainage system that will accept water from the hill was contemplated. Mr. Alim said that they will slide the driveway over and plant grass. He said that they will catch rain from gutters and at the foundation.

Mr. Becker reading the Planning Board recommendation.

Mr. Redgate said that the issue before the Board is the 500 Foot Rule. Mr. Alim said that the massing of the proposed structure is one story. He said that the other instances 64 and 68 Cartwright Road where the front setbacks are 40.9 feet are large new builds with three story massing at that level. He said that the proposed structure will not be substantially more detrimental to the neighborhood. Mr. Becker said that is not a standard for granting a variance.

Board members said that the few requests for relief from the 500 Foot Rule that have come before the Board have typically been controversial.



Mr. Sheffield said that architecturally, this will be an improvement. He said that they will need to solve the water issue.

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

Mr. Sheffield read comments from the Department of Public Works.

Mr. Becker asked about Wetlands Protection Committee approval. Mr. Alim said that work was done at the back of the house that required Wetlands review and approval. He said that the wetlands do not cross to the front of the house.

Mr. Sheffield moved, Mr. Redgate seconded the motion, and the Board voted unanimously to approve a variance from the 500 Foot Rule, subject to conditions that stormwater controls such as grass and plantings at the front and capture of rainwater by gutters and at the foundation shall be installed and that there shall be no construction vehicle parking on Cartwright Road.

### ZBA 2023-02, NAOMI & PHILLIP GETTO, 40 CHESTNUT STREET

Present at the public hearing were Tova Greenberg, Phillip and Naomi Getto, the Petitioner.

Ms. Greenberg said that said that the property currently has a small garage in the rear corner that is in the setback. She said that the proposal is to replace it with a 20 foot by 22 foot two car garage, maintaining the current setback.

Mr. Becker said that the Plot Plan lists the property as being located in Newton. He said that a revised plan should be submitted.

Mr. Becker asked about use of the upstairs in the garage. Ms. Greenberg said that it will be decked over for storage. She said that it will be boards above the rafters with a ladder to access the space. She said that it will not be a floor.

Mr. Sheffield said that all of the garages will be in a cluster.

Mr. Redgate asked about the distance between the house and the overhang to the property line. Mr. Sheffield said that the site plan shows an area that extends over top of the driveway. Ms. Greenberg said that there is a second floor overhang.

Mr. Redgate said that it appears that the existing driveway goes onto the neighbor's property. Ms. Greenberg submitted a copy of the driveway easement. She said that the intention is to stay within the existing easement.

Mr. Becker said that the three nonconformities are lot area, right side yard and rear yard setbacks for the shed. He said that the new garage will be where the existing shed is and then extend in toward the center of the property.

Mr. Sheffield said that the town map shows the property at 45 Cliff Road that has a garage that is hard against the property line. He asked if the surface of that garage will be only 3 feet 4 inches from the corner of the new garage. Ms. Greenberg said that is the current condition. She said that they will not encroach further into the setback.

Mr. Sheffield said that the plan creates a 3.5 foot strip between the garage and the property line that will be hard to maintain. Ms. Greenberg said that it is big enough to get a lawn mower back there. She said that the

way that the fences are, you will not be able to see it from any of the neighboring properties. Mr. Getto said that there is a small four foot wall facing the rear of the property and behind it are plantings. He said that there is a row of fir trees separating along the property line to Cliff Road. Mr. Sheffield asked about the intention to finish the space. Ms. Greenberg said that it will be similar to what is there now.

Mr. Redgate confirmed that there will be no need to modify the wall.

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. Sheffield seconded the motion, and the Board voted unanimously to approve a special permit and make findings that proposed garage will not be substantially more detrimental to the neighborhood than the existing nonconforming structure, subject to a conditions that the new dimensions will match the plot plan dated 12/21/22. The Board said that a revised plan that shows that the property is located in Wellesley should be submitted.

#### ZBA 2023-03, JIMMI BAZZARI, 756 WORCESTER STREET

Present at the public hearing were Mr. Himmelberger, Esq., and Jimmi Bazzari, the Petitioner.

Mr. Himmelberger said that the request is for a special permit to raze a detached garage and attach an enlarged two story garage with an Accessory Dwelling Unit (ADU) on second floor of the garage. He said that the garage will be connected to the existing house with a breezeway. He said that the existing house is nonconforming due to front and side yard setbacks. He said that the request is also for the ADU on the second floor. He said that the garage will be dug into the hillside and will allow for a walkout rear door on the second floor for the ADU. He said that there will be an internal staircase, so there will be no exposed stairs. He said that they believe that the ADU meets the criteria for approval and that the increased size of the garage is not substantially more detrimental to the neighborhood than the pre-existing nonconforming structure.

Mr. Becker said that the garage is dimensionally compliant. Mr. Himmelberger said that it is connected by breezeway to the nonconforming home and requires a special permit for the ADU. Mr. Becker said that the nonconformity is the front yard setback. He said that will not be affected by the proposed structure. Mr. Himmelberger said that they are seeking a special permit to construct the garage, attached to the nonconforming home, with an ADU on the second floor. Mr. Becker asked if the garage could be done by right. Mr. Himmelberger said that it is all one construction. Mr. Becker said that they clearly need a special permit for the ADU. Mr. Himmelberger said that the footprint will be increased and is subject to Section 5.1.3. of the Zoning Bylaw.

Mr. Becker said that it is hard to fit the drawings with the plot plan because the topography is such that it goes to the back of the hill. He said that you can see that on the front and back elevation but cannot see what is happening on the sides. He said that there are some places where you see a vertical line that clearly means that it is a retaining wall but when you look at the plot plan, you do not see it there. He said that the Board would like to be reassured that it meets the Zoning Bylaw requirements.

Mr. Bazzari said that the reason that the surveyor did not show the retaining wall is because it is all ledge in that area. He said that until he exposes it to see what it is, he may just have ledge and not dirt. He said that he may put a fence on top if needed.

Mr. Sheffield said that there will be an interesting attachment of the fence to the second floor of the building because the fence wants to continue all the way to the building but it is against the sloped roof. He said that



there are a bunch of conditions here that this exposes. He said that he could not tell from the site plan how far will the wall will go because of the ledge. He said that as the wall approaches the side lot line, it cannot be over four feet high without stepping. He said that there are a lot of conditions that the Board cannot tell from the drawings.

Mr. Himmelberger said that the proposal for the garage with the ADU requires a special permit and is not as of right.

Mr. Becker asked if changes were made to the house under the prior permit. Mr. Himmelberger said that there was an addition built.

Mr. Becker said that subtracting 900 feet for the ADU from the TLAG of 5,408 square feet, brings it down to 4,600 square feet. Mr. Himmelberger said that 1,800 square feet should be subtracted because it is part of the same building. Mr. Becker said that without the garage, the structure meets the threshold for an SR 10 District. Mr. Himmelberger said that the property is located in an SR15 District. He said that it is an exceptionally large lot. Mr. Becker said that most of the lot is at the back.

Mr. Himmelberger said that the way to address the retaining wall issue is that the wall has to be compliant or come back to the Board for further relief.

Mr. Sheffield said that the two corners of the ADU and retaining wall will be hard to figure out.

Mr. Becker read the Planning Board recommendation.

Mr. Himmelberger said that they can put screening on the left side of the garage but not on the other side because of the shared driveway. He said that there is considerable distance between the garage and the next house. He said that there is a row of hemlocks along the property line.

Mr. Sheffield said that it is hard to figure out what they will do with or without walls. Mr. Himmelberger said that, based on the ledge there, they probably will not need a wall. He said that the ledge provides the requisite support.

Mr. Becker said that on the east elevation, in order for the window at the lower level to have something to look at, they have to cut out something. He questioned how far the retaining wall comes out in order to make an outdoor space. Mr. Himmelberger said that the plan is to run out from the breezeway area to the rear of the garage, parallel with the garage.

Mr. Sheffield asked if the intent is to take out a fair amount of ledge to put the garage in. Mr. Bazzari said that he may have to have a chipper come in. He said that he had a lot of it when he put the addition on in 2018. Mr. Sheffield said that they could cut the ledge vertically and face it with a retaining wall to create outdoor space. Mr. Bazzari said that he may use the rock to build a wall. He said that it is hard to expose what is there. He said that he was told not to do anything until after he came before the Board.

Mr. Becker asked about coming out of the north elevation. Mr. Bazzari said that you can walk straight out. He said that you can walk up the hill 50 feet.

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

Mr. Sheffield asked about drainage. Mr. Bazzari said that he has a drywell that he will tie the gutters into. Mr. Becker said that there will be new impervious surface and the stormwater has to be accounted for.

Mr. Becker said that he was uncomfortable about the door that does to nowhere. Mr. Himmelberger said that it goes to a flat elevation. He said that you can walk around and down. He said that they will not excavate from side line to side line. Mr. Bazzari said that it will be more of a second egress. Mr. Himmelberger said that the main egress is on the side to a door and then up the stairs. Mr. Sheffield asked if you can get from the door to the backside to the front of the garage. Mr. Bazzari said that there is an opening for that. He said that he could put stairs in. He said that he already has a patio.

Mr. Sheffield said that there will be a lot of repair work to the hole left when they remove existing garage. Mr. Himmelberger said that a portion of the breezeway goes over it.

Mr. Becker discussed adding a condition that deals with treatment of the elevation from front to back and side to side. Mr. Himmelberger said that the Building Code speaks to some of the issues. Mr. Becker said that you don't know where the retaining walls are and how tall they are. He said that the Board heard that there is ledge there, so the Board does not know what the answer is. Mr. Himmelberger said that they will have to do a lot of excavation to determine soil conditions. He asked if the Board would consider granting a special permit and then requiring the Applicant to come back once the site has been excavated for further approval of those issues. He discussed a condition that states that the retaining walls have to be in compliance with the provisions of the Zoning Bylaw.

Mr. Becker said that additional stormwater runoff should not be an issue because they will only be adding 400 square feet on a 25,000 plus square foot lot. He discussed a condition for vegetative screening around the proposed structure.

Mr. Sheffield moved, Mr. Redgate seconded the motion, and the Board voted unanimously to approve a special permit, subject to conditions that stormwater protections shall be addressed for stormwater runoff, erosion controls to preclude debris from getting onto the driveway, and retaining walls, as yet undefined, shall comply with the town bylaw.

#### ZBA 2023-04, AMIR KRIPPER, 28 CRESCENT STREET

Mr. Becker said that the Board received a request to continue the petition to March 2, 2023.

Mr. Redgate moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to continue the petition to March 2, 2023.

#### ZBA 2023-05, TOWN OF WELLESLEY/MUNICIPAL LIGHT DEPARTMENT

Mr. Becker said that this is a special permit for a use. He said that there is a provision in the Zoning Bylaw for the Municipal Light Plant (MLP) to do the project in a residential district with a special permit.

Present at the public hearing were Briony Angus and Brian Huntley, Tighe + Bond, and Steve Bern, Citizens Energy Corporation.

Mr. Bern reviewed the Presentation, dated 2/2/23. He said that MLP issued an RFP in 2020 for a battery energy storage system. He reviewed the history of the project. He said that they are working through the permitting process to construct the battery energy system.

Mr. Bern gave an overview of the Citizens Energy Corporation. He said that they now do renewable energy projects for profit to fund their charitable programs. He said that they have a national footprint but are focused in the Northeast. He said that the company does this type of project on a regular basis. He displayed two examples of operational standalone battery energy storage projects.

Mr. Bern gave an overview of the project including the system to be installed on Municipal Way, dispatch during peak load periods, reducing demand-based costs for MLP and customers. He said that they will include micro grid controls that will allow the system to keep the power on for the Fire Department, MLP and the DPW during an emergency. He said that they have a lease with MLP. He said that they hope to be commercially operating by June of 2024. He said that Wellesley BESS, which is Citizens Energy, is responsible for decommissioning the project.

Mr. Huntley said that he is the project manager. He said that the project will be located in the side yard of the MLP facility. He said that the project will include lithium-ion batteries that will be located within storage containers on the site. He said that there will be signage and fencing will enclose the facility on its own. He said that they will provide some emergency backup power for Municipal Way facilities. He said that total land disturbance will be less than an acre. He said that seven containers will contain the batteries. He said that there will be some switchgear and a transformer. He said that the entirety of the facility will be enclosed in a chain link fence that has access for a pickup truck or whatever is needed to bring material in and out, should anything need to be maintained over the course of the project.

Ms. Angus displayed photographs and described the location of the project. She said that it is a pretty benign location for the proposed project. She said that Municipal Way is not publically traveled to a great extent. She said that there is a lot of equipment storage on Municipal Way already.

Ms. Angus said that they had a pre-permitting meeting with the Planning Department staff last summer. She said that this is being proposed as a use on MLP land. She said that it is a minor construction project but not a PSI and there is not Site Plan Review. She said that the project was reviewed by the Design Review Board in November, who had two recommendations at that time. She said that both of them have been addressed and the plans were updated for the Zoning Board. She said that the recommendations concerned adequate spacing for traffic at the existing curb cut into the site and the existing electrical equipment that the MLP is currently storing on the site will go further back into the site.

Ms. Angus said that their application addresses the special permit criteria in terms of this project. Mr. Becker said that the bylaw standards that relate to vehicular circulation, driveways, queuing lanes, pedestrian and bicycle safety are applicable in this case. He said that the Board will look at compatibility with surroundings, noxious uses and intensity of uses.

Ms. Angus said that this will not be a staffed facility. She said that it will be operated remotely and there will be infrequent operation and maintenance trips in and out. She said that the facility will not be much different from what is there today. She said that the containers are larger but are of a similar nature to what is stored there now. She said that a Fire Department representative was present at the meeting in July.

Mr. Sheffield asked about security, in light of the recent incidents at electrical facilities. He said that it is an open chain link fence, so people can see in it. Mr. Bern said that it is behind the existing fence, so it will be a fence within a fence. He said that the Department of Public Works closes its gates. Mr. Sheffield asked if any applications to the chain link fence should be taken into account. Mr. Bern said that the recent incidents have been going towards substations which control more power to people. He said that this is just assisting power. He said that if they shut this down, it will not turn off power to anyone.

Mr. Redgate confirmed that the containers are locked. Mr. Bern said that there will be a fence within a fence that will be locked. He said that they will have a lease and will be responsible for the locks. He said that every container is also locked. He said that the fence will be 8 foot chain link.

Ms. Angus said that there is no access into the containers. She said that all of the controls and the operation are on the exterior.

Mr. Huntley said that it is very similar to a transformer that is outside of a building. He said that no one will be working inside the containers.

Mr. Redgate asked about the lease term. Mr. Bern said that it is for 20 years. He said that they are building it as a 20 year asset.

Mr. Becker read the Planning Board recommendation.

Mr. Redgate moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to approve a special permit for the use, as the site is already used for similar purposes.

#### ZBA 2023-06, STONECLEVE LLC, 21 STONECLEVE ROAD

Present at the public hearing were David Himmelberger, Esq. and Tim Burke, Architect, representing Stonecleve LLC, the Petitioner.

Mr. Himmelberger said that the request is for modification of an existing variance to allow for the construction of an additional second story above a portion of the house that currently is only a single story. He said that the home is nonconforming due to lot size, frontage, front yard setback, side yard setback, and lot coverage. He said that the proposed second story construction will add 744 square feet, increasing the overall TLAG to 2,112 square feet in an SR 10 District for which 3,600 square feet is the trigger.

Mr. Sheffield discussed concerns about constructability on the tight site, circulation, handling of equipment, and parking. He asked about temporarily taking away the carport if they need the space and then replace it. Mr. Burke said that they could do that but there is quite a bit of space at the front along the side. He said that he works a lot in Boston and is used to working in tight sites. He said that they will be working within the existing footprint and only going up. Mr. Sheffield said that construction equipment and vehicles take up space. Mr. Burke said that they will work with the neighbors to make sure that they do not inconvenience anyone.

Mr. Becker said that the variance to be modified is from 1970.

Mr. Sheffield asked if off site pre fabrication of parts was considered. Mr. Burke said that it will be stick built. Mr. Himmelberger said that they could never get a crane on a trailer to lift off pre-fab structures there.

Mr. Becker read the Planning Board recommendation.

Mr. Sheffield said that the area creates close neighbors and friends. He asked that the neighbors be alerted about construction and be provided with a phone number to call if there is a problem. Mr. Burke said that the plan is to reach out to all of the neighbors and have a contact number.

Mr. Redgate said that the roads should be kept clear for emergency vehicles. He said that construction worker parking in the streets should be minimized.

Mr. Sheffield asked about the length of the construction period. Mr. Burke said that they anticipating six to seven months. He said that the plan is to get started on construction as soon as possible.

Mr. Sheffield moved, Mr. Redgate seconded the motion, and the Board voted unanimously to grant modification of a variance, subject to the conditions recommended in the Planning Board recommendation, except for condition #3.

#### ZBA 2023-07, KRASSEN DRAGANOV, 2 DALE STREET REALTY TRUST, 2 DALE STREET

Present at the public hearing was David Himmelberger, Esq., Krassen Draganov, Trustee, 2 Dale Street Realty Trust, and Bill Parket, Builder.

Mr. Becker said that there was an email exchange regarding a continuance on this for the Wetlands Protection Committee (WPC). Mr. Sheffield said that the WPC recommendation is based on a horizontal measurement that does not take topography into account. Mr. Himmelberger said that Wellesley adopted wetlands regulations in 2017. He said that there is no contention by the WPC that the 100 foot buffer is not accurate. He read an excerpt from the WPC Regulations regarding activities outside of the buffer area. He said that this project is outside of the buffer zone. He said that he included topographical information from the Town's GIS. He said that all of the water drains away from the buffer zone. He said that the Site Plan shows that all of the work will be outside of the buffer zone. He said that based on the WPC Regulations, he did understand why the project would require an RDA. Mr. Becker said that if you do the RDA process, the WPC draws the conclusions.

Mr. Becker said that Drawing A-1 has a list of preliminary stuff relating to the septic system and Health Department and the Fire Marshall. He said that the Board does not have documentation on any of that. He said that the drawings that are attached to the application are labeled as schematics. He said that a lot of design development has not occurred yet or has not made it to the package before the Board. He said that the drawings before the Board are schematics, not pre-construction. Mr. Himmelberger said that the plans show what they intend to build.

Mr. Redgate said that the new house, as shown on A1, is inside the 100 foot buffer. Mr. Himmelberger said that it is not on the Site Plan, Plan 1. He said that the surveyor sets the 100 foot buffer. Mr. Sheffield said that Plan A1 and Plan 1 are not the same for the buffer zone. Mr. Becker said that is why the Board wants to have the WPC to look at it.

Mr. Becker said that it is not clear from Plan A1 the extent of the roadwork that gets stuff from the real world in to the project and back out again. Mr. Himmelberger said that the plans show Dale Street and the existing paved road. Mr. Becker said that there are a bunch of changes, so it is not clear where things start and stop. He said that his understanding is that Dale Street is not an accepted way. He said that the Board has not seen anything that shows that the Fire Marshall says that you can get stuff in or out of there.

Mr. Becker said that the Board did not see anything from the Health Department about the septic system. Mr. Himmelberger questioned whether the decision to hook up to town sewer should be considered by the Board in its finding for that special permit that it would not be substantially more detrimental. He said that if the Board did feel that the septic system is an issue, it can condition its approval on hook up to town sewer. He said that is what is currently planned for this house and a neighboring structure at 1 Dale Street.

Mr. Becker said that the Board does not think that they have sufficient solid information to make the decision that the Petitioner is asking for. He said that the request is for a special permit. He said that the nonconforming structure will not be there anymore and nothing that impacted the existing structure applies to the new structure. He said that normally when there is a teardown and a rebuild, the rebuild complies. He said that the Board did not see anything that tells it why this would be a special permit, not a variance. Mr. Himmelberger said that there are frequently teardowns where they are not reconstructing fully compliant structures. He said that the Board approves them quite frequently. He said that in this case, they will be significantly improving setback issues and pulling the house onto the property. He said that they will improve the front yard setback from zero to 9.9 feet. He said that it will be compliant everywhere else. He said that the Board has never held that in order to do a teardown that the new construction has to be fully compliant, where there is a pre-existing nonconforming structure. Mr. Becker said that the Board did not have an explanation for that.

Mr. Himmelberger said that the desire is to build a house that is more compliant in the center of the lot with a smaller portion in the setback. He said that it is not just that the setback will be improved from zero to 9.9 feet, but also the amount of the dwelling within the setback decreasing.

Mr. Redgate said that this will be built into the hill on the top of the hill. He said that there is some additional planning and information that is not shown that makes it hard to understand that this potentially has a need for WPC review. He said that even though the building is shown on a plan outside of the 100 foot buffer zone, they will be building in a delicate area. He said that they may be encroaching into 100 foot buffer and that would require at least an RDA. He said that the Board does not want to go through the process to determine if the 9.9 foot setback if there is another step to go through. He said that it should come to the Board in sequence if they had to alter what they applied for. He said that it is pretty standard for the Board to have WPC comes before ZBA.

Mr. Draganov confirmed that the Board is recommending that the project be reviewed by the WPC to finalize the plans and then come back before this Board. He asked if it would be acceptable to the Board if the Board added a condition to the decision regarding hook up to the town sewer system. Mr. Becker said that it should be shown on the drawings. He said that there is sewer 300 feet down the road on Dale Street.

Mr. Redgate confirmed that the proposed house will be larger than the existing one.

Mr. Becker said that TLAG is an issue as well. He said that there is some TLAG information on the plans but it is not complete. He said that it looks like there will be a significant increase. Mr. Himmelberger said that it will be a significant increase but not significantly over 3,600 square feet. Mr. Draganov said that most of the TLAG is in the hill because of the topography of the site. Mr. Becker said that there are three places where TLAG appears. He said that if you add up the two that are shown, they are already above 3,600 square feet. He said that if they the third floor, it could be up to the 5,000's.

Mr. Himmelberger said that his sense is that the Board would like to have the project go before the WPC prior to coming back to the Board. He said that at the same time, they can refine additional aspects of the plans. He asked if the Board would entertain a two month continuance to April 6, 2023.

The Board discussed continuing the hearing.

Mr. Redgate moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to continue the petition to April 6, 2023.

As there was no further business to come before the Board, the hearing was adjourned at 10:21 pm.

Respectfully submitted,

Lenore R. Mahoney  
Executive Secretary



Response to ZBA hearing of October 6, 2022 regarding the petition of Jaden and Lara Crawford for approval of variance to setback requirements of Wellesley Zoning Bylaw § (B.) (¶3) for 15 Rice Street, Wellesley Hills, MA 02481

ATTN: Wellesley Zoning Board of Appeals

I have carefully considered the pending appeal before the ZBA. What we are actually dealing with is a property issue that is violating my civil rights and demonstrating discrimination against me. Two concerns remain to be addressed, namely the placement of the AC unit and the noise generated by it. On a personal level I am being subjected to Involuntary noise pollution which threatens my quiet peace and enjoyment of my property. On a legal level the AC was illegally installed and does not meet the required setback designated by the town's bylaws. I have expressed this to the ZBA at previous hearings. I feel it is important for me to also reiterate my status as a member of three protected classes in the Commonwealth of Massachusetts : 1) I am a senior citizen, 2) I am a war veteran and 3) I am service connected disabled..

For guidance of what would be an acceptable compromise I have cited the precedent set at 16 Rice Street by the Town of Wellesley on September 23, 2020 when the ZBA made a decision to allow a setback of 9.8 feet for the AC unit with a decibel level of 56 and a fence erected between the private and public properties. The unit was placed at this setback from the property line that borders unoccupied town land used casually for recreational purposes. I expect the same standards used at 16 Rice Street to apply to 15 Rice Street. While not meeting the 20 foot setback requirement from my property, I am willing to compromise. I feel that a 9.8 foot setback of the AC with noise mitigation of the unit to achieve a decibel level of 56 and an erected barrier between the two properties would be satisfactory.

I sincerely hope that the ZBA members will consider my request which I feel is both reasonable and based on a common sense approach to resolving this matter. It must be realized that an AC is a "want", in essence a luxury. If the petition for variance is granted I would ask the board to justify why the "wants" of one neighbor supersede the needs of another and why town building regulations and zoning bylaws apply for some but not others. This indicates that my civil rights have been violated, suggesting to any unbiased observer that a blatant act of discrimination has been knowingly committed by the Town of Wellesley..

The ZBA must make its decision in the best interest of the Town of Wellesley and for the public good.



Robert H. Fleming  
432 Washington Street  
Wellesley Hills, MA 02481

January 30, 2023

CC: Exec. Dir. General Govt. Services, Town of Wellesley  
Building Inspector ,Town of Wellesley  
Select Board, Town of Wellesley  
Town Clerk, Town of Wellesley  
Planning Board, Town of Wellesley\  
Veterans Service Officer, Town of Wellesley