

**ZONING BOARD OF APPEALS**

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WALTER B. ADAMS
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March 2, 2023
Kingsbury Room, Police Station
7:30 pm

Zoning Board of Appeals Members Present: Robert W. Levy
Walter B. Adams
Derek B. Redgate

BUSINESS MEETING**ZBA 2021-54, KHALIL & SAMEENA PIRANI, 12 RICE STREET**

Mr. Levy said that the request is to extend a special permit that was granted in 2021. He said that there are different standards that the Board considers for extensions. He said that under the State statute, the standard for extension of a special permit is whether the Board finds good cause for the extension. He said that the standard for a variance is that the permit granting authority may extend it at its discretion.

There was no one present at the business meeting representing 12 Rice Street.

The Board took no action on the request.

ZBA 2022-23, LS BURKE, LLC, 56 WASHINGTON STREET

Present at the business meeting was David Himmelberger, Esq., representing Burke Funeral Home in connection with its application to extend modification of a previously granted variance to an existing variance, ZBA 77-4. He said that the modification was to allow a small addition to the building. He said that due to escalating construction costs, the project was delayed and has not yet commenced. He said that the variance is due to expire on March 17, 2023. He said that pursuant to Chapter 40A, Section 10, the Petitioner is requesting that the Board extend the deadline for the variance for six months.

Mr. Levy said that Mr. Himmelberger's letter asked for extension for another six months. He confirmed that this was the first request to extend for six months.

Mr. Levy said that he was not sure if escalating construction price is good cause since it will not necessarily be reduced in the next six months. He said that the statute allows it in the Board's discretion without reciting any standard to do that.

Mr. Adams said that there is no plan of the garage before the Board tonight. He said that they will be removing a parking space, so there is no gain in parking. He said that the removed parking space will be replaced by the garage. He said if the ramp is handicapped accessible. Mr. Himmelberger said that the ramp and a corresponding one on the Crescent Street side are existing. Mr. Adams said that the ramp that is nearer to the proposed garage will be compromised. He said that the garage will make it inaccessible. He asked if the ramps lead to a way to get throughout the full that might be open to the public. Mr. Himmelberger said that the one on Crescent Street does.

Mr. Himmelberger said that the project has to commence within six months or the Petitioner will have to come back to the Board.

Mr. Levy said that the only matter before the Board is the extension.

Mr. Redgate moved, Mr. Adams seconded the motion, and the Board voted unanimously to approve extension of the variance for six months from the date of the original expiration.

PUBLIC HEARING

ZBA 2000-10, BARBARA SEARLE, TRUSTEE, 118 PARKER ROAD REALTY TRUST, 118 PARKER ROAD

Present at the public hearing was Mr. Himmelberger, Esq., representing Barbara Searle, the Petitioner.

Mr. Himmelberger said that the request is for modification of a special permit that was previously granted by the ZBA in ZBA 2000-10. He said that at the time that the special permit was granted, it permitted construction of two one story additions to a single story home that was then fully conforming except for lot coverage. He said that at the time, the existing lot coverage, prior to seeking the special permit, was 2,023 square feet, or 20.2 percent, which was nonconforming at the time. He said that the maximum lot coverage allowed at the time was 20 percent. He said that the Board authorized construction of two one story additions to increase the nonconforming lot coverage to 2,294 square feet, or 22.9 percent. He said that in granting that special permit, the Board stated that it was due to the fact that the dwelling was only a one story ranch. He said that the Board imposed a condition that subsequent to completion of the two one story additions, neither the square footage of the interior living space of the dwelling or the footprint of the dwelling would be expanded. He said that meant that they could not build up or expand the footprint. He said that as of 2000, the Zoning Bylaw (ZBL) limited lot coverage between 10,000 to 20,000 square feet to a maximum of 20 percent. He said that in 2003, the ZBL was amended to allow lot coverage that was the greater of 20 percent or 2,500 square feet. He said that now that the bylaw has been re-formatted, Section 5.2 B now allows lot coverage up to 2,500 square feet. He said that Ms. Searle's existing property is less than that at 2,294 square feet, significantly below the maximum of 2,500 square feet. He said that if Ms. Searle asked today without having done the additions, they would be permitted as of right because the additions meet the setbacks and are beneath the maximum lot coverage. He requested modification of a previously granted special permit to strike the condition limiting her ability to ever expand the footprint or square footage of the house and placing Ms. Searle in the same spot that she would have been in if she hadn't built but came forward today.

Mr. Levy confirmed that the only reason for the special permit in 2000 was for the lot coverage and it is Mr. Himmelberger's position that it now conforms to lot coverage and that the structure and the lot are both conforming. He questioned why the Board would not just revoke the special permit. Mr. Himmelberger said that would be fine also.

Mr. Levy asked if there are any plans to do something with the property. Mr. Himmelberger said that at some point Ms. Searle will sell the property and she did not want prospective purchasers looking at a special permit that restricted expansion.

Michael Grant, Inspector of Buildings/Zoning Enforcement Officer, said that the special permit goes with the property and the condition remains enforceable. He said that the Board can either modify the special permit to remove the condition or revoke the special permit to remove the barrier. He said that subsequent to issuance of this special permit, the Town enacted many other fail safes for expanding properties. He said that lot coverage can go up to 2,500 square feet but the Town also has Large House Review and other things that would regulate the size of the home.

Mr. Levy asked about abandoning a special permit. He proposed that the Board revoke the special permit at the request of the applicant if it is now a conforming lot. Mr. Adams said that would be based on the fact that the special permit was approved when the property was nonconforming and now it is conforming. Mr. Levy said that he would do it based on the fact that the applicant asked the Board to do it. He said that a special permit normally grants rights for things that you could not do.

Mr. Adams said that he was uncomfortable abandoning or revoking a permit by a previous board without there being a clear explanation about why the Board is doing it. He said that he understands why Mr. Himmelberger's client wants to resolve the issue and leave it to the next time that someone is trying to get a permit for this property. He said that the Board needs to do this in a way that makes it clear that the property at the time was nonconforming and required a special permit and now, due to a change in the ZBL, the property is compliant. Mr. Levy said that the relief sought in the special permit is no longer necessary.

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

Mr. Levy moved, Mr. Adams seconded the motion, and the Board voted unanimously to modify the special permit, based upon the fact that the reason for the relief sought in ZBA 2000-10 is no longer applicable due to a change in the Zoning Bylaw and, at the request of the Applicant, the Board is going to nullify the special permit, ZBA 2000-10.

ZBA 2023-13, WELLESLEY COLLEGE, 106 CENTRAL STREET

Present at the public hearing was Johanna Schneider, Esq., on behalf of Wellesley College, the Petitioner.

Ms. Schneider said that the College is appreciative of the long standing cooperative relationship with the town. She said that the goal of the appeal is not at all to circumvent the necessary permit process. She said that it is to obtain clarity as to what the necessary process is and to the extent that the process is not required, to be able to proceed judiciously with pulling building permits for a series of upgrades and renovations, deferred maintenance and life safety improvements.

Ms. Schneider said that the Appeal arises in the context of the College's multi-year capital project to improve ADA access on the campus. She said that they sought the Building Inspector's interpretation and filed this appeal in connection with the Tower Court and the Clapp Library, that are located on the College campus. She said that they expect that the same issue will arise on other campus buildings as the project progresses. She said that they are anxious to resolve what they think is some ambiguity in the bylaw with respect to the applicability of Design Review Board (DRB) review for these uniquely situated buildings.

Ms. Schneider said that the DRB has jurisdiction over projects that proposed to change the outside appearance a building that is visible from a public or private street or way. She said that the bylaw itself does not define what a public way is. She said that they looked at other town resources in an effort to understand how the campus drives might be characterized. She said that they started with the Department of

Public Works (DPW) website and the Accepted and Unaccepted Street List that is compiled by the Engineering Division. She said that none of the drives on the campus appear on the list. She said that they also looked at the town's guide to private ways, which says that there are approximately 14 miles of private ways comprising about 110 streets. She said that the campus drives were not identified on that list. She said that what the College is talking about are not really streets of any kind.

Mr. Levy asked if the ways are named. Ms. Schneider said that they do not.

Mr. Levy said that Michael Grant, Building Inspector, concedes that you cannot see any of the buildings from a way that is not on campus.

Ms. Schneider said that Tower Court is located to the left of the Clapp Library on the campus map that was submitted. She said that there are circuitous drives that connect the buildings. She said that the campus is characterized by a network of small paths and driveways that are internal to the campus and wholly owned and controlled by the College. She said that the purpose of them is to allow vehicles, bicycles and pedestrians to access campus buildings. She said that they are no different than a private driveway serving a private home. She said that what the College is proposing to do is tantamount to a homeowner who is served by a long driveway wanting to install a handicapped accessible entry. She said that the College does not believe that the DRB would have jurisdiction over that kind of project. Mr. Levy discussed jurisdiction for a residence on a public way. Ms. Schneider said that these are not ways like others found throughout the town but are more like driveways that lead to a private building or private home.

Mr. Adams asked if the College closes the entrances, labeled East Entrance and West Entrance, so that people can't pass that way. He said that the road seems to be open all the time. Ms. Schneider said that the College does not close them regularly but has the right to close them. She said that on occasion they are closed. Mr. Levy said that the entrances were closed during Covid and during certain events.

Mr. Adams said that the public is allowed to access the campus. He said that he thinks that Mr. Grant is correct in that his concern about exterior, site work and handicapped accessibility work is regulated and under Mr. Grant's jurisdiction and he has the right to opine on regulation on some aspects of the site and the buildings. Mr. Levy said that the College is not trying to eliminate the Building Department's review of a building permit but does not want to go before the DRB. Mr. Adams confirmed that there are projects that have to go before the DRB but do not come before the ZBA.

Mr. Redgate said that the Board would approve a minor Site Plan. He said that over 5,000 square feet of disturbance and under PSI is a major construction project that requires site plan approval. He said that a minor construction project does not require ZBA approval but goes to DRB.

Mr. Redgate said that two ramps would push over 5,000 square feet for a major construction project that would require DRB and ZBA review.

Ms. Schneider said that the subject projects are very small in nature and would be otherwise able to be accomplished just a building permit. She said that because they may be visible from what the town considers a private way, they have to go through DRB. She said that the issue is that the College does not want to go through the DRB's advisory process because it can be extremely time consuming and can add several months to the process to what would otherwise just be something that would be reviewed by Mr. Grant. Mr. Adams said that the fact that it takes a while to go through the DRB process is the basis under which it would be reasonable to come up with the proposed theory that this is just a driveway rather than it being something that is generally included in the vocabulary of what a major drive through a campus is.

Mr. Levy said that the sole matter is whether the Board will consider the roadways that are internal to the campus as ways that would trigger DRB review. Mr. Redgate said that the Appeal is based on the fact that

the Building Inspector thinks that these are private ways. He said that it is clearly written that exterior work to a project requires Site Plan Review at a certain threshold.

Ms. Schneider said that the College requested a determination from Mr. Grant as to whether or not the work they were doing would require DRB review because it is visible from a private way. She said that it is the College's position that these are not private ways within the town. She said that there is no definition in the ZBL and when they went to try to fill in the gap of what a private way might be, they did not find the campus drives on the list of the limited town resources that explains what a private way might be. She said that because the ZBL is silent, they are trying to figure it out.

Mr. Levy said that from a real estate perspective, a public way is either taken or granted by the town. He said that private ways do have meaning within the law for access for utilities and other purposes. He said that he did not think that these drives fall to the level of private ways. Ms. Schneider said that you would not give one of these driveways as the address. Mr. Levy said that they are more akin to a driveway. He said that just because the word driveway contains the way does not make it a way under the bylaw.

Mr. Grant said that one of the main roads through the campus is named Wellesley College Drive. He said that with respect to comparing this to a driveway to a single family residence, Section 5.6 of the ZBL exempts one or two family dwellings from project approval. Mr. Levy said that Wellesley Office Park may have offshoots through parking areas and the like that are accessible to automobiles and pedestrians. He questioned whether those would be considered to be ways that are subject to the bylaw.

Mr. Grant said that this is a private way on private land. He said that the definition of driveway defines it as a way. He said that the bylaw is silent and does not dictate or reference any other standard. He said that any definition other than in the bylaw does not lend any credence to the argument. He said that you can't pick a document that fits your narrative.

Mr. Levy said that you have to go back to look at what the intent was. He said that he assumed that it involved projects that members of the public would be able to view or access. He said that the town has an interest in regulating those projects. He said that when you have a large land owner such as Wellesley College with internal travel lanes. He questioned what the town's interest would be in requiring this or what benefit it would be to the town. He said that he appreciated the fact that Wellesley College and Babson have never argued the Dover Amendment for the many projects that have come before the Board. He questioned whether town meeting was thinking about Clapp Library when they crafted this bylaw.

Mr. Redgate said that handicapped ramps are significant enough to trigger the threshold for Project Approval. Mr. Levy said that what is before the Board is whether DRB has to give an advisory opinion on the projects. Ms. Schneider said that it concerns the first clause in Section 1.3 for a minor construction project, the change in the outside appearance of a building or premises visible from a public or private street or way requiring a building permit. She said that the projects before the ZBA tonight only require a building permit. She said that the question is whether the projects have to go to DRB before getting a building permit.

Mr. Levy discussed concerns about the implications of the board's decisions. He said that if the Board was to agree with the College and the project tips off PSI, would the College use the Board's decision as a get out of jail free card from the permitting process. Ms. Schneider said that it only relates to minor construction. Mr. Grant said that it is mandated that they go through DRB for a major construction project.

Mr. Redgate confirmed that two separate building permits would have to be issued for this project.

Mr. Grant said that the main address for the campus is 106 Central Street. Mr. Adams asked how emergency vehicles get to the different buildings.

Mr. Levy confirmed that the College can close their roads at any time.

Mr. Grant said that the bylaw talks about a private way. He said that the driveways act more like a public way than a driveway. Mr. Levy said that the fee interest in the whole campus is owned by Wellesley College. He said that under the statute, a private way is owned to the middle by the two abutters. He said that here it is merged because it is one owner. Ms. Schneider said that they can gate the whole campus off, gate off the driveways and turn them into pedestrian pathways. She said that the town does not consider them unaccepted ways.

Mr. Levy said that he was leaning toward the view that this is internal campus property and the College should be able to do the work without DRB review.

Mr. Adams said that the thresholds for what they review is set in the DRB regulations. Mr. Levy said that the Board interprets the ZBL.

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

Amir Kripper said that he has been a DRB member for seven years. He said that Wellesley College has superb architecture and doubted that they would do anything to diminish the quality of their buildings. He said that they are the best in town. He said that allowing the College to forego the DRB process may say to other large tenants that they can do the same thing and it also devalues the work of the DRB. He said that the DRB has never given the College a hard time. He said that the College will not gain a lot by skipping the DRB process. He said that they meet once a month.

Mr. Levy discussed concerns about making a decision that will bite the Board on another project. Ms. Schneider said that the College is not trying evade the DRB. She said that the DRB process can sometimes take a couple of months. She said that it takes time to prepare the materials that DRB requires. She said that these are critical life safety and accessibility upgrades and there is pressure to complete them expeditiously. She said that having a two to three month delay to get through DRB is burdensome on these projects. She said that the College does not believe that these are private ways in any real definition of the term. She said that the College is happy to go through the process when applicable. She said that given the location of Tower Court and the Clapp Library on the campus, the College does not see the jurisdiction being there.

David Himmelberger, Esq., said that there is a provision in Section 5.6 of the ZBL that concerns a series of two or more construction projects with a central theme on a lot that are filed within a three year period. He said that the Building Inspector would have the ability to link them together, triggering a major construction project.

Mr. Adams said that he did not want to start seeing large property owners coming in for the same relief. Mr. Levy said that this is a limited issue of whether these two buildings are visible from a public or private way. He said that the Board could also make a finding that the College is entitled to do it under MGL, Chapter 40A, Section 3, the Dover Amendment. Mr. Adams said that the town can reasonably regulate non-profit and educational institutions. Mr. Levy said that the Board can regulate the bulk, height, yard size, lot area and setbacks, parking and building coverage, not views from roads. Ms. Schneider said that under case law for the Dover Amendment there is plenty of precedent that says the town cannot regulate design or require site plan or review of this type of use.

Mr. Redgate said that it is a unique situation where the College wants to renovate a building and does not feel that it will need site work. He said that the introduction of a handicapped ramp ties in with everything that is interior and may bring it to the level of site plan review. He said that these projects can get bigger fast.

Mr. Adams said that these are important buildings and the College will want them to fit in.

Ms. Schneider said that the scope of these projects would not trigger site plan review. She said that the legal issue that they are placing before the Board is whether or not these are projects that are visible from a private way.

Mr. Levy said that in a real estate context, he would not consider these private ways. He said that the word driveway does contain the word way. He said that the intent of the bylaw was to protect members of the public, not the students at Wellesley College. He said that he would be willing to support the Appellant.

Mr. Redgate said that the reference to DPW did not make much sense to him because DPW's concerns are about geometry and safety that are accepted by a public entity. He questioned linking that definition to this. He said that the bylaw is clear. He said that it is unfortunate that the College wants to renovate a building and build a ramp. He said that the bylaw has not been changed to reflect that situation.

Ms. Schneider said that the issue is that the bylaw uses the term private way and does not define it. She said that was the reason that they went to the DPW list is because there is a void in the ZBL and they were looking for a sense of what the definition might be.

Mr. Levy confirmed with Mr. Grant that the buildings are not subject to setback requirements from the ways.

Mr. Adams said that they look like streets and Fire and Police rely on them.

Mr. Levy questioned whether access roads behind buildings would be required to go through DRB review as well.

Mr. Levy said that the petition before the Board is whether to overrule Mr. Grant's determination that the ways on Wellesley College campus to access these two buildings are private ways within the meaning of Section 5.6 of the Zoning Bylaw.

Mr. Levy said that other than Babson, he did not see this coming before the Board in another context.

Mr. Adams said that his biggest concern is that it will become a gateway. He said that Wellesley College and Babson have the capability to go through the laborious procedures that the bylaws create.

Mr. Redgate moved and Mr. Adams seconded the motion to support the Building Inspector's determination letter.

Mr. Adams voted Aye.

Mr. Redgate voted Aye.

Mr. Levy voted Nay.

As the vote of the Board was not unanimous, the Appeal was denied.

ZBA 2023-04, AMIR KRIPPER, 28 CRESCENT STREET

Present at the public hearing was Amir Kripper, the Petitioner.

Mr. Kripper said that the Board approved an addition to his house in 2019. He said that the plan shows condensers in the rear. He said that it is a nonconforming lot with a nonconforming setback at the rear. He

said that the wording of the approval did not mention specifically the ac condensers. He said that the Building Department is asking that the Board spell out that the ac condensers can be where they are.

Mr. Levy said that a plan from 2018 was submitted. He said that the something on it appears to be labeled ac condensers at the rear. He said that it was not provided with a copy of the permit. Mr. Kripper said that the ZBA granted a special permit for the garage and a second floor addition. He said that when they finished construction, the Building Department told him that he needed to go to the ZBA for approval of the ac condensers. Mr. Levy said that the Board does not generally approve plans but approves projects. Mr. Kripper said that the building has been built in accordance with the plans that were approved. He said that plan showed the location of the ac condensers.

Mr. Levy questioned whether the ac condensers would need a variance, not a special permit, because ac condensers are prohibited in the setbacks. He said that a special permit is for a pre-existing nonconforming structure. He said that if the ac condensers were replacing existing ac condensers that were installed prior to enactment of the bylaw, they could be subject to a special permit. He said that he did not think that the Board had the authority to allow installation of the ac condensers with a special permit in 2018.

Mr. Kripper said that the ac condensers were there and they relocated them slightly to the left.

Mr. Adams said that the aqueduct is higher than the base of Mr. Kripper's property at the back. He said that the garage level is the basement on the back said and at the ground level on the front side. He said that it is a 2.5 story structure that only interferes with the view for people walking on the Aqueduct Trail. He said that properties across the trail are much higher. He said that the only way that relief for the ac condensers can be granted is by variance.

Mr. Kripper said that because his property is lower than the aqueduct, he does not a neighbor within 200 feet who would see or hear it. He said that the spirit of the bylaw is noise and there is no noise issue here.

Mr. Levy said that the bylaw does not give the Board discretion to make a finding.

Mr. Levy asked if there was any discussion at the initial hearing regarding the ac condensers. Mr. Kripper said that the Board saw the plan. Mr. Levy said that the Board tries to be specific when it grants relief.

Mr. Kripper said that there have been cases before the ZBA where the plans do not show the ac condensers. He said that, in this case, they were shown. Mr. Levy said that it looks like a pencil drawing on the survey that says, "to be relocated." He asked if that was put on the survey for this hearing. Mr. Kripper said that he thought that it was. Mr. Levy said that the plan before the Board is not the approved plan.

Mr. Kripper said that a tip of an ac condenser exceeded the property line. He said that they moved the condensers.

Mr. Levy asked if Mr. Kripper knows the date that the original ac condensers were installed. He confirmed that they have already been replaced. He said that if the condensers pre-dated the ZBL, the Board could find that they could be relocated.

Mr. Kripper said that you cannot see or hear the condensers.

Mr. Levy discussed the standard for granting a variance.

Mr. Kripper said that he was asking the Board to say that the ac condensers were part of the plan that was approved by the Board for the construction of the garage and second floor addition.

Mr. Adams discussed the standard for granting a special permit and for granting a variance. He said that Mr. Kripper has not provided the Board with a basis for determining whether the condensers could comply, what the hardship is, and whether it would further derogate from the intention of the bylaw.

Mr. Levy said that another option is to convince the Board that the ac condensers pre-date enactment of the bylaw.

Mr. Kripper said that he put an addition on a nonconforming lot. He said that it is a beautiful house from 1875. He said that rather than tear down the house that was constrained by three foot setbacks, he chose to preserve the existing house. He said that the hardship is that he has no setback. He said that there is no hardship to anyone else because they can't see or hear the condensers. He said that the nonconforming condensers were existing. He asked that the Board amend the special permit to approve the addition and the ac condensers in the setback. Mr. Levy said that is not what is before the Board. He said that Mr. Kripper should file a request to amend ZBA 2019-17 and be prepared to demonstrate that the original condensers predated the enactment of the bylaw.

Mr. Kripper said that the Board granted relief for an addition and the plan shows the ac condensers.

Mr. Levy said that ZBA is a quasi-judicial Board that does not have the discretion to do what it thinks is right or fair. He said that the Board has a set of rules that they are trying to follow. Mr. Kripper said that the Board already granted approval to build an addition in the setback. Mr. Levy said that his concern is about the previous Board's conscious decision about relocation of the ac condensers. He said that the plan that was submitted to this Board is different from the plan that was approved.

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

Mr. Levy read the Planning Board recommendation.

Mr. Levy said that Mr. Kripper can either put forth his best argument for a variance and establish that it meets the criteria in bylaw and Chapter 40A or come back to seek to modify the special permit by demonstrating that the original condensers pre-existing the enactment of the bylaw that prohibited them.

Mr. Kripper requested that the petition be continued to April 6, 2023.

Mr. Levy said that Mr. Kripper should review the bylaw requirements and criteria for a variance. He said that for a special permit modification, Mr. Kripper will need to demonstrate that the original condensers predated the bylaw.

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

ZBA 2023-09, TOWN OF WELLESLEY/SELECT BOARD, 485 WASHINGTON STREET (POLICE ANTENNA)

Present at the public hearing were Chief Jack Pilecki, Deputy Chief Scott Whittemore, and Officer Tim Gover, Wellesley Police Department.

Chief Pilecki said that the request is for a special permit for a radio tower. He said that for the past couple of years, the Police have been trying to install a new communication system, which includes the tower outside the building. He said that they completed the dispatch center and the final phase is the tower. He said that the existing lattice tower was built in 1949, almost 75 years ago. He said that it needs to be replaced because

it is unsafe and is overloaded with equipment. He said that they cannot get a service man to climb the tower due to safety concerns.

Chief Pilecki said that the request is for a 100 foot tower, as opposed to 89 feet for the existing tower. He said that in order to maintain the same radio coverage of the town, they need a 100 foot tower.

Mr. Adams asked about costs issues. He said that the bylaw prohibits lattice towers. Chief Pilecki said that a non-lattice tower is twice the cost. He said that it would be about \$65,000, as opposed to a lattice tower at \$32,000. He said that they currently have Police, Fire, DPW, and State Police on the tower. He said that it is used a lot for frequencies for various agencies. He said that it will be a Class 3 Public Safety tower, constructed in five 20 foot sections. He said that his understanding is that the town bylaw was enacted to prevent Diehl's Hardware from putting a radio tower up.

Mr. Adams discussed concerns about precedent.

Mr. Levy said that there is an antenna bylaw that has certain requirements. He said that part of the bylaw excludes any lattice towers. He said that under the antenna bylaw, the Board could not grant relief with a special permit. He said that instead of proceeding under the antenna bylaw, if this is a pre-existing nonconforming tower, both the State Statute and the Zoning Bylaw give certain rights to replace a nonconforming structure such as this. He said that he is satisfied that the current tower does pre-exist enactment of the antenna bylaw. He said that it is a use that the Board could grant under different special permit criteria. He said that for pre-existing nonconforming structures and lots, the State Statute gives preferences to one and two family homes and allows the Board to grant special permits if it makes a finding that the new structure is not substantially more detrimental to the neighborhood than the current structure. He said that under the law, the same standard does not exist for non-one or two family homes. He said that under the statutes, rights to allow a rebuild of a nonconforming structure are limited. He said that he was cognizant of the public safety of this request and its importance to everyone in the town. He said that there is a provision in the bylaw that allows for a disaster rebuild. He said that if a pre-existing structure fails, the Board can allow a permit for reconstruction. He said that if the Board can be convinced that the existing tower is a hazard, he could get to a finding.

Chief Pilecki said that they currently can't find a maintenance worker for fear of that person's life. He said that, according to the technicians, it is overloaded and has no business still standing. He said that it could cause a lot of damage or kill someone if it comes down.

Mr. Levy said that there is a public safety aspect of the request and the public hazard of the structure. He said that losing the service would be a disaster for the town.

Deputy Chief Showstead said that the original tower was constructed in 1949 to support a low band radio system, which was one antenna for the entire town. He said that they switched to a different radio system in the 1980's which required them to move the main transmitter antenna to Maugus Hill. He said that it was a supplement antenna that they used for day to day communications and emergency backup. He said that when they took on the Fire Department and combined dispatch in the 1990's, the tower taken down and put back up. He said that it was never a new tower in the 1990's when the new station was built. He said that they added many other Fire Department channels which are part of the communications plans for the community. He said that many contractors over the past few years have told them that tower, in the condition that it is in, should be replaced. He said that it is in deplorable condition. He said that it is not a disaster yet but it is at a point where it could be and they foresee that.

Mr. Levy said that he spoke with Town Counsel about the prospect of amending the bylaw but it would not get onto the spring town meeting.

Mr. Levy discussed disaster rebuild. He said that the only other issue connected to disaster rebuild is that the repair or reconstruction shall be used in the same manner and the nonconforming nature of the repair to reconstruct the building does not increase in any respect. He said that the proposal is to go up an additional 11 feet. Chief Pilecki said that the existing tower is 89 feet. He said that they do not make sections to make it that height. He said that they need the 100 feet to cover the town.

Mr. Adams asked if Chief Pilecki spoke with the Executive Director about coming up with the extra money for a conforming antenna. Chief Pilecki said that he had not. He said that if they were to put a monopole antenna, it would look terrible. He said that the lattice blends in with the trees. He said that the monopole would draw more attention. He said that the base of the monopole would be a five foot tall cement block, which puts the monopole even higher.

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

Mr. Redgate confirmed that the tower was constructed in 1949 and that this is a new Police Station as of 1995. Chief Pilecki said that at the time, they were able to take the tower down to facilitate putting the building up and then put the tower back up in the same location. Mr. Levy said that the tower was not abandoned.

Mr. Adams said that it sounds like it would not be too difficult to get a structural engineer to say that the tower is unsafe and has to come down. He said that the Building Inspector could then order that it be replaced. Chief Pilecki said that the various experts have been telling them that the tower has to be replaced because it is unsafe.

Mr. Levy asked if the extra 11 feet affects the fall zone.

Mr. Redgate said that replacing the tower in the same location provides the same screening. He said that the railroad tracks are behind it.

Mr. Adams said that the Police communications equipment will have to be at the top of the tower. Deputy Chief Showstead said that there will be one antenna at the top that will go into a box that will divide into 24 separate antennas. He said that the antenna at the top will feed to a box in the Police Station basement. He said that there will be one cable coming down, which is much cleaner and neater. He said that when they specked this out, the desire was to be respectful of the neighborhood and to keep it the same way because no one knew that it was back there. He said that a monopole would be a significant change to the neighborhood.

Mr. Levy moved, Mr. Adams seconded the motion, and the Board voted unanimously to find that this is a unique situation and that a special permit be granted, as the tower presents a danger to the public and can be rebuilt as a disaster rebuild to the height that it needs to be to serve the town.

ZBA 2023-08, FR LINDEN SQUARE, INC., 180 LINDEN STREET (ATELIER)

Present at the public hearing was Ed Spinney, SignArt.

Mr. Spinney said that the proposed sign went before the DRB for review a couple of times and was negotiated. He said that the Zoning Bylaw allows 14 inch letter height by right. He said that they could not produce the logo and typeface unless they had 17 inch letters. He said that the DRB supports the proposed sign with 17 inch letters.

Mr. Levy read the DRB recommendation. He said that they recommended approval of Option B.

Mr. Adams asked if there will be two blade signs and one wall sign. Mr. Spinney said that there will be two wall signs, one in front and one in back. He said that a blade sign will be on the parking lot side.

Mr. Adams discussed issues with signage for the whole complex. He said that there was a signage package program for the whole area that has been totally abandoned. He said that everyone is coming to the Board. Mr. Spinney said that they did not think it through well when they put it together.

Mr. Levy said that there was approval of ZBA 2022-38 that the Planning Board is recommending that the Board condition this decision with. He said that the decision issued to the property owner covered all of the signs in the complex. Mr. Spinney said that he was told by the landlord that the proposed sign meets all of the specifications.

Mr. Spinney said that they have a letter of authorization from the owner.

Mr. Levy asked about lighting. Mr. Spinney said that there is no lighting proposed. He said that the Linden Square people are putting up light fixtures across the top, facing down over the fronts of all of the building. He said that is the only lighting that he is aware of. Mr. Levy said that the Board typically restricts when the lighting goes on and off.

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

Mr. Levy read the Planning Board recommendation.

Mr. Adams moved, Mr. Redgate seconded the motion, and the Board voted unanimously to approve a special permit, subject to the conditions contained in ZBA 2022-38.

ZBA 2023-10, CENTRAL GALLERIA MANAGEMENT, INC., 73 CENTRAL STREET

Present at the public hearing was Jeff Kulass, Viewpoint Sign and Awning.

Mr. Kulass said that the sign was previously approved but the logo has changed. He said that the proposed sign got DRB approval. He said that the request is for letter height that matches the previously approved letter height. He said that the sign will now be on a backer to match the William Raveis sign next door.

Mr. Adams said that part of the original approval was to remove the light fixture and it is still there.

The Board discussed the expiration of the previously granted special permit for a sign. Mr. Levy said that the application before the Board is for a new application, not modification of ZBA 2019-63.

The Board discussed the DRB recommendation.

Mr. Adams asked about sign lighting. Mr. Kulass said that it will be halo lit on a black background.

Mr. Redgate said that the request is for 20 inch letters. Mr. Spinney said that there is a 16 inch icon and 20 inch letters.

Mr. Adams moved, Mr. Redgate seconded the motion, and the Board voted unanimously to approve a special permit, subject to the conditions of the DRB recommendation, that the existing light bar be removed, and that illumination of the sign shall be shut off no later than 8 pm.

ZBA 2-23-11, ANNE BAE, 36 BROOK STREET

Present at the public hearing was Anne Bae, the Petitioner.

Ms. Bae said that the request is for renewal of a special permit to rent part of 36 Brook Street.

Mr. Adams said that the request is to renew the permit for a two family dwelling with 11 bedrooms, with a condition that an owner is living in the building. Ms. Bae said that she lives there now.

Mr. Adams said that Mr. Grant inspected the property and confirmed that there are two dwelling units, one over the garage and that there are two kitchens and found them to be Code compliant.

Mr. Levy asked who is living in the other unit. Ms. Bae said that there is a middle aged couple living in the main house that has six bedrooms and four full baths. She said that they have three children in their 20's who come and go. She said that the family used to live in Wellesley and sold their house.

Mr. Levy said that the Board had discussion at the previous hearing because Ms. Bae was not living there at the time. Ms. Bae said that her daughter was living there. Mr. Levy said that the Board inserted a provision that required either Ms. Bae or a family member to live there. Ms. Bae said that she lives full time in 36R, which is the over the garage unit. She said that she sold her property in Natick.

Mr. Levy said that the permit will have several conditions that were imposed in the past if it is extended. He said that the permit will end if no family member resides there. He asked if the tenant is aware of that condition. Ms. Bae said that she has a lease with the tenant. Mr. Levy said that the Board wants the tenant to understand that the permit for the right to live there will expire if family member doesn't live there. Ms. Bae said that the tenant knows that.

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

David Himmelberger said that this might qualify under the ADU bylaw.

Mr. Levy read the Planning Board recommendation.

Mr. Redgate moved, Mr. Adams seconded the motion, and the Board voted unanimously to extend the special permit for two years, subject to the same conditions in ZBA 2019-06.

ZBA 2020-73, MICHAEL McCULLOUGH, 11 ELMWOOD ROAD

Present at the public hearing were Michael McCullough, the Petitioner and David Himmelberger, Esq.

Mr. Himmelberger said that the request is for modification and extension of Special Permit, ZBA 2020-73, to permit construction of a two story addition, relocation of an ac condenser, and construction of a deck with less than required setbacks on an existing nonconforming structure with less than required left side yard setbacks.

Mr. Himmelberger said that due to Covid, cost and supply chain issues, the project has not commenced, which is the basis for the request for an extension of the special permit. He said that during the intervening time, the Petitioner considered a few modifications that include changes to windows on the left side, adding a roof over the deck, changing the rear windows on the left side of the addition, and relocating the ac condenser that was approved for relocation in the left side yard setback to the right side of the house, adjacent to an existing ac condenser. He said that, as previously approved, the ac condenser would be relocated to 10 feet from the left side property line. He said that it will sit in the proposed location on the right next to an existing condenser that is 16 feet to the right side property line. He said that the neighbor on that side submitted a letter of support.

Mr. Himmelberger said that he submitted clouded plans that show where the modifications to the approved special permit were located. He said that the windows on the left side are an aesthetic improvement. He said that the covered porch adds a little more privacy for the neighbors as well as for his client. He said that the ac condenser will be in an improved location that is further from the lot line.

Mr. Levy confirmed that the three issues are extension of the special permit, changes to the house and relocation of the ac condenser.

Mr. Adams said that he did not object to the window changes but strongly objected to extending the roof. He said that the project keeps growing. He said that the Board already granted extensive right to extend the nonconformity and now they are asking to extend it even further. Mr. McCullough said that it is a south facing porch, so the sun beats on it. He said that it is typically too hot to use during the day without coverage. He said that they keep an umbrella up all of the time but thought a roof would be more permanent and make it look a lot nicer. Mr. Adams said that it is too close to the property line. He said that they might consider installing a roll out awning. He said that they keep coming back looking for more. He said that it is a significant extension of the nonconformities.

Mr. Redgate said that the plot plans shows no change to the nonconforming setback. Mr. Himmelberger said that the change is to move the permitted ac condenser on the left side at 10 feet to the right side, next to the original ac condenser, which is 16 feet from the property line. Mr. Levy said that would be a new nonconformity. Mr. Himmelberger said that an existing ac condenser is already there. Mr. Levy asked about the Board's jurisdiction to grant relief for that. Mr. Himmelberger said that it would be extending a pre-existing nonconformity. Mr. Adams said that it will probably increase the noise levels on that side whereas it was spread out on either previously. Mr. Levy said that it will be somewhat better being by moving it further from the lot line.

Mr. Himmelberger said that the Board previously approved relocation of the existing ac condenser to make room the addition. He said that it approved to be moved to a 10 foot setback on the east side. He displayed the location of the existing location and approved location on the approved plan.

Mr. McCullough said that one of the condensers is for the first floor and the other is for the second floor.

Mr. Levy asked if there is any other place to put it that would be within the setback. Mr. Himmelberger said that there are not any ideal spots.

Mr. Himmelberger said that there is an existing nonconforming condenser on the right side. He said that they are seeking to extend that by adding a second one. He said that they are not creating a new nonconformity on the right side. He said that they will remove a nonconformity on the east side.

Mr. Levy asked if a heat pump was considered. Mr. McCullough said that a representative from MassSave came out and recommended that they not have a heat pump.

Mr. McCullough said that the request for the roof was not -pre-meditated. He said that they are not trying to get more each time they came back to the Board. He said that the first three times that they came to the Board, they took less to appease the Board. He said that they care deeply about how this project looks. He said that they consulted with the neighbors on both sides to make sure that they are totally aligned with the look of the plans. He said that everyone agreed that a more permanent roof over the deck would be much more appealing than any other temporary solution such as an awning or umbrella. He said that it is in the spirit of what the Zoning Board cares about that they are for permission to put a roof over the deck.

Mr. Himmelberger said that there was also a change in the windows above the deck area.

Mr. Levy said that there is an alcove adjacent to the shed at the back. Mr. Himmelberger said that there is an outdoor shower to the left of the door to the basement. Mr. Levy said that it is not far away and could be plumbed in. He said that now, with a blank canvas, it could make sense to put it at the side of the jog. Mr. Himmelberger said that if they can't persuade the Board that moving it from 10 foot currently permitted location on the east side to the 16 foot location adjacent to the existing one on the west side, they would keep the permitted condenser at the approved location on the east side.

Mr. Levy asked about one condenser with two zones. Mr. McCullough said that their air conditioning expert recommended two unit, so he was not sure if that would be an option.

Mr. Himmelberger said that he understands Mr. Adams' concern regarding the covered porch. He confirmed that the proposed changes to the windows on the east side and the rear are acceptable to the Board. He said that they are left with withdrawing the request to move the ac condenser on the east. He said that they are requesting extension of the existing special permit as modified by the windows. Mr. Levy asked how much time the Petitioner will need for the extension. Mr. Himmelberger said that they are asking for a year.

Mr. Levy read the Planning Board recommendation.

Mr. Levy asked the Board members are further discussion of moving the ac condenser. Mr. Himmelberger said that, as permitted by the previous decision, the condenser would be located 10 feet from the property line. Mr. Levy said that this is an opportunity to get six feet of setback. He said that there are issues with sound mitigation.

Christine Lal, 7 Elmwood Road, said that she lives on the west side of the property. She said that currently there is a giant arbor vitae between the two properties, so she cannot see or hear the current condenser. She said that her property is also raised up 10 feet above Mr. McCullough's. She said that she cannot see or hear the current condenser. She said that the condenser is most protected from either neighbor on the west side of the house. She said that it will be louder or more visible for the neighbor on the other side, who is amenable to the proposed modifications.

Mr. Levy moved, Mr. Redgate seconded the motion, and the Board voted unanimously to find that the currently approved ac condenser on the east side can be moved, as picking up six feet is a positive move and that two ac condensers going off at the same time does not double the sound, to approve the proposed modifications except for the proposed roof over the deck, and to approve extension of the special permit for one year, subject to conditions that there shall be reasonable sound mitigation such as shrubbery or lattice for the ac condenser.

ZBA 2023-12, ROTUNDA REALTY LLC/GROVE STREET NEIGHBORS LLC, 35 & 39 GROVE STREET

Present at the public hearing were Jeff Kulass, Viewpoint Sign and Awning, and Jeff Marcus, owner, Truly's.

Mr. Marcus said that the intent is to hire a GM and open for business in about a month and a half. He said that Truly's will be located in the new building.

Mr. Adams said that one part of the business is in old building and the other is in a new building. He said that the businesses are a package but have two different addresses. Mr. Marcus said that they looked at other parts of Wellesley but it worked out that they got 39 Grove Street and were able to keep the original.

Mr. Kulass said that it is effectively two different entities. He said that the issue came down to the lettering on the awning. He said that the Design Review Board (DRB) said that it was two separate signs. The DRB

strongly recommended that the Applicant come to the ZBA to get approval of lettering on the second awning because they liked the look and the continuity. He said that it will be five and a half inch lettering on the second awning. He said that they put Truly's vinyl sign in the window. He said that they need relief for the letter height for that.

Mr. Marcus said that the biggest confusion since they moved is that people go to old location and are not seeing the other one. He said that people driving by see that it is all papered up and don't see that it is next door.

Mr. Levy said that there are two separate building owners, two separate addresses, and two DRB recommendations.

Mr. Levy said that the DRB made a number of recommendations. He asked if they are acceptable to Mr. Marcus.

Mr. Levy asked about lighting. Mr. Kulass said that it is LED in the awning that will not shine through the fabric, just down lighting for evenings. Mr. Adams confirmed that it will not illuminate the printing.

Mr. Adams confirmed that the DRB recommendations were incorporated into the plans that were submitted to the ZBA.

Mr. Levy read the DRB recommendations.

Mr. Levy discussed adding condition that lighting is shut off by 10 pm.

Mr. Redgate moved, Mr. Adams seconded the motion, and the Board voted unanimously to approve a special permit for 35 Grove Street, subject to the DRB recommendations and that lighting be shut off by 10 pm.

Mr. Adams moved, Mr. Redgate seconded the motion, and the Board voted unanimously to approve a special permit for 39 Grove Street, subject to the DRB recommendations and that lighting be shut off by 10 pm.

As there was no further business to come before the Board, the hearing was adjourned at 10:40 pm.

Respectfully submitted,

Lenore R. Mahoney
Executive Secretary