

**ZONING BOARD OF APPEALS**

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March 3, 2022

7:30 pm

Juliani Meeting Room, Town Hall

Zoning Board of Appeals Members Present: J. Randolph Becker
David G. Sheffield
Richard L. Seegel

PUBLIC HEARING**ZBA 2202-05 WELLESLEY PLACE LLC, 978 WORCESTER STREET**

Present at the public hearing were Joe Murray, representing Dunkin Donuts and Michael Carr, Manager, Wellesley Place LLC.

Mr. Becker said that the Board previously received correspondence from one of the tenants at 978 Worcester Street. He asked what has transpired since then. Mr. Murray said that they had a meeting with the upstairs tenant. He said that there was a situation in late October, early November when they were short on help due to problems with Covid. He said that it caused the line to back up more than usual. He said that they have taken care of it since then. He said that they will keep the lobby open at all times, which is important during peak hours. He said that they met with Kerri Bass, the upstairs tenant, and came up with a lot of ideas. He said that they were able to secure more parking for Dunkin Donuts and for the upstairs tenant.

Mr. Carr said that there are six parking spaces that have never used in the five years that the building has been open. He said that they will put up signs that designate those spaces for employee parking at the back of the building. He said that they gave Dunkin Donuts two more spaces in the garage for a total of ten spaces where they had eight before. He said that they met with Kerri Bass, Practice Manager, Wellesley Hills Primary Care, and she was happy with the result.

Mr. Murray said that most of the people who work at Wellesley Hill Primary Care are regular customers at Dunkin Donuts. He said that things have levelled out after the bump in the road in the fall, staffing has improved and they are back on track.

Mr. Becker discussed the need for another condition to prevent the problem from reoccurring. He said that among the Special Permit Use Standards, the only two that have potential for change are the circulation pattern and vehicle queuing. He asked Board members if they were satisfied that the changes made to the parking will solve the circulation and queuing problems.

Mr. Murray said that they learned that there can be a large gap between cars. He said that they have gone out and encouraged people to move forward, which has tightened up the lane. He said that they now have more people at the window making sure that it is operating at the right speed.

Mr. Seegel asked if it would be helpful to put some markings in the drive through lane between space 58 and 59, indicating that cars should not block the entrance to the building. Mr. Murray said that they can mark it with stripes. Mr. Sheffield suggested that it be indicated as a pedestrian area and marked as a crosswalk so that cars do not park at the entrance to the back door.

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

Mr. Murray asked for a three year renewal of the special permit. Mr. Becker discussed existing conditions to the permit. Mr. Seegel confirmed that the building is at full occupancy now. He said that condition can be taken out. He said that a condition should be added that signage or striping shall be placed on the drive through where there are entrances to the building.

Mr. Seegel moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to renew the special permit, subject to removal of the part of the existing condition for full occupancy and adding a condition for signage or striping at the entrances to the building.

ZBA 2022-16, FR LINDEN SQUARE, INC., 185 LINDEN STREET (BANK OF AMERICA)

Present at the public hearing was Eric Gunn, CBRE, Facility Partner with Bank of America. He said that the request is for renewal of the special permit for two drive up lanes that operate 24 hours daily at 185 Linden Street, in the Linden Square Development.

Mr. Becker asked if there have been any changes to vehicle circulation or queuing lanes.

Mr. Seegel said that he noticed more pickup activity at restaurants during Covid. He said that in some instances cars blocked the entrance. He asked if signage was considered. Mr. Gunn said that he did not get any calls about that specifically. He said that things have opened up over time and seem to be getting closer to as it was. He said the problem was the result of people waiting in abnormal situations and that problem should go away.

Mr. Becker said that the existing permit was granted for two years.

Mr. Sheffield asked for a description of the circulation. Mr. Gunn said that they worked with the landlord when the area was redesigned to open it up a bit and it seems to be working well at this point. He said that there is probably not much more that they can do without getting the landlord involved.

Mr. Sheffield said that the Planning Board suggested signage for no right turn. Mr. Becker read the Planning Board recommendation.

David Himmelberger, Esq., said that the Board granted approval for additional construction at the California Pizza Kitchen building for outdoor seating that will extend further out between the two buildings. He said that will make it more difficult to make a right turn. He said that there is a left arrow on the concrete retaining wall as you exit the ATM to take you around the back of the building to the Cambridge Trust drive-through and the exit. Mr. Seegel said that it might be a good idea to put a sign there for left turn only after you go through the lanes.

Mr. Sheffield said that the left turn sign on the wall is small and hard to find. He said that you have to maneuver around the dumpsters. He said that improved signage might help.

Mr. Sheffield moved, Mr. Seegel seconded the motion, and the Board voted unanimously to renew the Special Permit for three years, subject to a condition that the Petitioner shall investigate the possibility of installing a left turn only sign.

ZBA 2022-21, FR LINDEN SQUARE, INC., 195-197 LINDEN STREET

Present at the public hearing was Tom Fontaine, representing Cambridge Trust, who said that the request is for a three year renewal of the special permit for the drive up window at their location in Linden Square. He said that nothing has changed since the last approval.

Mr. Sheffield said that the approach to the drive through is visually difficult with the dumpsters. Mr. Fontaine said that Cambridge Trust does not have control of the dumpsters. Mr. Seegel said that the Board should address that issue the next time that Federal Realty comes before the Board.

Mr. Sheffield said that the sign on the wall for Cambridge Trust is small and it hard to see because of the mural.

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

Mr. Becker discussed existing conditions of the special permit.

Mr. Seegel moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to renew the Special Permit for three years, subject to the conditions that are currently in effect.

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

Present at the public hearing were David Himmelberger, Esq. and Frank Utano, Blar Vik LLC, the Petitioner. He said that the request is for Zoning relief to construct a new single family home on a property that has a pre-existing nonconforming structure with a 10 foot side yard setback. He said that the Applicant came before the Board in September of 2021 with plans for a modern contemporary looking home. He said that there was considerable concern voiced by the Board and the neighbors as to that look not being harmonious with the neighborhood. He said that they came back in November of 2021 with a traditionally designed home that maintained a left side yard setback of 20 feet and a right side yard setback just over 10 feet. He said that the question was raised at that time whether a variance had been considered to center the house on the lot with two 15 foot setbacks. He said that they were prepared to seek a variance based on the topography of the lot, where there is a significant drop from front to back of 25 feet, and the narrow shape of lot at 70 feet by 169 feet. He said that when he re-examined the original site plan, he saw that the existing left side yard setback is 19.3 feet and is nonconforming. He said that, under Bellalta, the nonconformity on the left side can be worsened from 19.3 feet to 15.2 feet. He said that the right side yard setback will be improved from 10.2 feet to 15.3 feet. He said that they do not need a variance but do need a special permit/finding to allow the house to be centered on the lot to 15.2 on the left side and 15.3 on the right side. He said that the house is similar in size with a TLAG of just under 3,600 square feet. He said that at two houses down at 28 Bay View Road, the living area is 3,478 square feet. He said that at 20 Bay View Road it is 4,082 square feet. He said that the size of the proposed house is consistent with some of the homes. He said that it will be larger than the adjacent homes but, by improving to the 15 foot setbacks, they have done a good job centering the house and minimizing the impacts. He said that the right side at 36 Bay View Road has a 10.5 to their garage and 30 Bay View Road has a 10 foot setback on the other side of the house. He said that stormwater management will take all of the stormwater into two infiltration systems behind the house. He said that the redesigned house is attractive and fits with the neighborhood.

Mr. Seegel said that the Bellalta case does apply. He said that this is a good solution.

Mr. Sheffield asked about the height of the walls. Mr. Himmelberger said that the walls will all be four feet or less.

Mr. Sheffield said that no second floor plan was submitted. He said that Elevation Drawing A4 shows the left side as a blank side. He asked about the function behind that space. Mr. Himmelberger said that there was a reduction from four to three bedrooms. He said that they can put another window on the second floor. Mr. Sheffield said that there are two types of windows on the second floor on the right side. Mr. Himmelberger said that the transom windows were placed there in response to concerns of the neighbor on the right side. He said that they can put a transom window on the left side. Mr. Utano said that there is a bedroom on the back left side. He said that can put two transom windows there that are consistent with the right side.

Mr. Becker confirmed that Elevation Drawing A2, dated 6/20/2021 is no longer valid. Mr. Himmelberger said that it was modified by pulling back the right side.

Peter Mariani, 36 Bay View Road, said that this is the fourth time that the neighbors on Bay View Road have come before the Board to oppose the plans for rebuilding the house at 34 Bay View Road. He said that while none of the neighbors are opposed to the house being torn down because of its downtrodden, dilapidated and unsafe status. He said that they are opposed to the current plans that the Developer has proposed. He said that when the property was purchased by the Developer and the plans were formed, there was a total disregard for the rules of the town with regard to 20 foot setbacks on both the left side and the right side of the property. He said that the size of the house concerned the neighbors on both sides of the house and directly across the street. He said that the Developer did adhere to the 3,600 TLAG Rule by having a house at 3,499 square feet. He said that there are issues regarding closeness, fire safety, privacy, views of Moses Pond and the Aqueduct Path. He said that there has been a precedent for 20 foot setbacks in the neighborhood for several years when a Developer was told to change their plans to meet the requirements. He asked that the same be done for this project.

Mr. Becker said that because there is a left side yard nonconformity and a right side nonconformity, so Section 19 does not apply. He said that Section 17 applies and that says that if the Developer proposes something that does not make the nonconformity worse, he is entitled to a permit. He said that if he does make it worse, he has to present data to the Board that shows that it is not substantially more detrimental to the neighborhood than the existing structure.

Sharon Beckman, 30 Bay View Road, said that she welcomes new neighbors and a new house to be built on the lot. She said that the house is decrepit and probably a danger about to fall down. She said that the Board members are concerned with architecture but the neighbors about concerned about compliance with Zoning laws. She said that the neighbors do not understand the need to build a house that is so large that it cannot comply with the Zoning rules. She said that the Attorney mentioned that there is another large house on the street that is approximately the same size. She said that house is on a larger lot with more frontage and is compliant with the Town's Zoning laws. She said that the house would not be typical for that part of the street. She said that the whole half of the street that follows from Shadow Lane has modest older houses on smaller lots. She said that every lot has the slope behind it and many of the lots have smaller frontage. She said that those houses were built in compliance with the Zoning laws. Some of them have a one car garage that is not in compliance but having a small garage with no windows is different from have a large towering house next to both of the houses. She discussed the Bellalta Case, which she said was a different type of case. She said that it was for a small addition that the neighbors said was consistent with the neighborhood. She said that was the record that the SJC relied on. She said that in this neighborhood of smaller homes, the neighbors are saying that they welcome new construction but it should comply with the Zoning law. She said that approval of noncompliance should be the exception. She said that the Applicant has not shown that there is a big need for a large house on that lot. She said that when the property was purchased, the size,

frontage, topography of the lot and were probably factored into the purchase price. She said that if the Board allows the reduction in the side setbacks, the same rules should apply to every other lot that they would be entitled to the same thing. She said that will bring the houses even closer together. She said that, with respect to substantial detriment, it would be a dramatic change to neighborhood if the Zoning laws are not applied. She said that every smaller home could be torn down and new construction could be built with 3,500 square foot houses that can only be built if there are exceptions to the Zoning law. She said that would be a substantial change to the neighborhood. She asked about the nonconformity being based on inches. She asked what that was based on. She asked if a survey had been done. She said that even it is a few inches, it should be considered to be de minimis and should not allow for extension of an additional five feet. She said that she submitted a letter.

Patricia Kidik, 33 Bay View Road, said that she lives directly across from the proposed house. She said that she has been there for 38 years. She said that there is no excuse to overbuild on a small lot if the reason to do it is to just to provide more living space. She said that the Bay View neighborhood is extremely sensitive to the Zoning laws. She said that they have the sports center and they daily deal with Zoning laws that were not adhered to. She said that they have noise, rodents, lights and lost forest. She said that she can see Morses Pond now and may lose her view. She said that Zoning laws were not adhered to.

Erin Reilly, 28 Bay View Road, said that the neighbors around the house are heartfelt and it is not a nimby thing because all three of the neighbors would probably benefit from the Board granting a variance because their lots will become more valuable. She said that the houses are priced in accordance with the restrictions. She said that if the restrictions are not there, it is the neighbors' best interest. She said that the neighbors prefer the character of the neighborhood. She said that the project has been looked at from different mindsets of developer, lawyer, and architect. She said that she is an architect. She said that this is not a flat lot. She said that the Developer hired a lawyer to help him get relief from Zoning. She said that the Developer should have hired an architect to design for this location. She said that the proposed house is not good for this location. She discussed the retaining walls at the back. She said that they will need to be higher than four feet. She discussed the slope of the lot. She said that another project on Bay View had to hire an engineer during construction for retaining walls because they had overlooked what the site would be. She said that the foundation wall will have to be 15 to 20 feet. She discussed the dimensions of the great room. She said that it will be 40 feet by 25 feet. She said that there is a 7 foot by 10 foot island. She said that with an eating area, a huge banquet table and two full size couches, there would still be a 10 foot swath of space in the middle. She said that they are asking for relief to build such a big house that impacts the neighbors. She said that this will be more detrimental to the neighborhood. She said that a good architect could start with the slope and the frontage to come up with a plan that will give them everything that they need. She said that it does not fulfil the requirements to grant a special permit.

Ms. Beckman said that the Board said that the survey is the basis for a finding of the nonconformity at 34 Bay View Road. Mr. Himmelberger said that a stamped plan dated 5/19/2021 shows a 19.3 foot left side yard setback.

Mr. Becker read the Planning Board recommendation

Mr. Becker said that the case that Mr. Himmelberger presented at this hearing arises under Section 17 of the Zoning Bylaw, which deals with houses that have a nonconformity and what people can and cannot do with those houses. He said that Section 17 is substantially the same as Chapter 40A, Section 6, second exception of the Massachusetts General Laws. He said that a nonconformity arises because something changed after something was done. He said that in this case the house was built in 1941 and after 1941 the town changed the setbacks, which meant that the house was no longer in compliance with the bylaw. He said that it does not mean that the owner of the property has lost all value in his property and cannot do anything. He said that Section 17 and Chapter 40A, Section 6 tell you what people can do with that land. He said that the decision that the Board renders tonight does not come from what the Board members feel in their hearts but

from the Zoning Bylaw and the case law that underlies it. He said that the Board members do not have a free choice. He said that they are trying to balance the Town's needs versus the property rights, in accordance with the bylaw.

Ms. Beckman asked for an explanation about the Board's determination that the proposed structure will not be substantially more detrimental to the neighborhood. Mr. Becker said that the house meets all of the dimensional requirements of the Zoning bylaw except for the two that were discussed. He said that it is not a question of those two things but a question of a lot of different things such as the size and style of the house. He said that the design was changed based on guidance from the Board in consideration of the neighbors' concerns. He said that he looked at the size of houses in comparison to other houses in the neighborhood and compared the 1941 house and the 2022 house. He said that he decided that it would not be substantially more detrimental. He said that the Planning Board said that it would not be more detrimental. He said that the neighborhood is not simply the houses on Bay View Road but also other houses in Wellesley where the Board sees the same thing happening. He said that this is not done without a lot of thought but is done within the bylaw. He said that none of the problems that the neighbors brought up really spoke to the issues.

Mr. Himmelberger said that the setbacks will remain the same quantity of setback. He said that they did not lessen the net setback collectively of the two sides, which goes to it not being substantially more detrimental. He said that under Bellalta they could have sought to go further in but they did not.

Mr. Seegel moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to grant a Special Permit and make a finding that the change will not be substantially more detrimental to the neighborhood than the existing nonconforming structure, subject to the condition that two transom windows be added on the left side on the second floor.

ZBA 2022-11, TOWN OF WELLESLEY SCHOOL DEPARTMENT/FACILITY MAINTENANCE DEPARTMENT, 50 KINGSBURY STREET (WELLESLEY MIDDLE SCHOOL)

Mr. Becker said that the Board is awaiting some input from Town Counsel.

Mr. Seegel moved, Mr. Becker seconded the motion, and the Board voted unanimously to continue the petition to March 17, 2022.

ZBA 2022-17, CHARLES & PEGGY COLLIER, 5 MAURICE ROAD

Present at the public hearing was Mike Tartamella, Architect, who said that the request is for relief for a proposed addition to the rear of the existing structure. He said that the existing house is in the 10,000 square foot Single Residence District and has nonconformities on both sides and the front. He said that on the east side is an existing one story addition. He said that the proposal is to construct a one story addition on that portion and a two story addition coming out of the rear, along with a proposed deck. He said that the proposed additions will maintain the existing nonconforming setbacks on the east side with slight improvement to the setbacks. He said that the existing setback is 14.5 feet and the proposed setback will be 14.7 feet, lining up with the existing structure on the east side. He said that TLAG of the completed house will be 3,130 square feet, which is below the threshold for the district.

Mr. Becker said that the property is located in a Water Supply Protection District. He said that he did not see anything about stormwater runoff. Mr. Tartamella said that they anticipate putting in an infiltration system in the rear yard because that area is well known to have some water table issues. He said that they anticipate putting a crawl space under the addition for the same reason.

Mr. Seegel said that two air conditioner pads on either sides of the house are located in the setback area. He said that they will have to be moved to the rear and out of the side yard. Mr. Tartamella said that the air

conditioner pads are existing and show up in the photographs. Mr. Seegel said that there was nothing in the history that shows when the air conditioners were installed. He said that if they have been there over 10 years, they are grandfathered. He said that the last permit that was issued was in 1970.

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

Mr. Becker read the Planning Board recommendation.

Mr. Seegel moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to grant a special permit and make a finding that after examination of various building permits, the air conditioner pads are pre-existing and not permitted but are grandfathered as 10 years have passed since the last permit was granted for the property, and that the proposed structure shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, subject to a condition that a stormwater infiltration system be placed on the property to capture the additional runoff.

ZBA 2022-18, RICHARD MATHIAS & NA YI, 30 SUMMIT ROAD

Present at the public hearing was Richard Mathias, the Petitioner, who said that he and his wife bought the property last year. He said that before they move in, they would like to renovate the existing property and add an addition on the left side of a garage with a master bedroom above. He said that the right side of the property is nonconforming with a 12 foot side yard setback. He said that at the right rear of the property is a deck that was built in 1978 that they would like to raze and rebuild, expanding further back. He said that they will maintain the right side yard setback where it lines up with the right side of the house at 19.3 feet.

Mr. Seegel asked about TLAG calculations. Mr. Mathias said that the existing property is 3,200 square feet and 5,200 square feet is proposed. Mr. Becker said that it is an 18,000 square foot lot.

Mr. Seegel said that he concurred with the Planning Board's commendation of the Petitioner's plan to add to the structure rather than replace it.

Mr. Becker read the Planning Board recommendation.

Mr. Becker said that the property is located in a Water Supply Protection District and there was nothing submitted about runoff. Mr. Mathias said that they have engaged an engineer to look at that. He said that they did not get that done before the hearing due to Covid and other things.

Mr. Sheffield asked if there are any plans for the large pines and rhododendrons on the east corner. Mr. Mathias said that they want to leave as much as possible. He said that the contractor will try to minimize what happens to that space during construction.

Mr. Sheffield said that there is a double wide driveway and turnaround from Summit Road. He questioned whether there needs to be such a large curb cut. He said that he liked the circulation. He said that a previous owner told him of a history of flooding in the basement.

Mr. Seegel said that there appears to be a lot of ledge under where the two story addition is proposed. He asked about blasting. Mr. Mathias said that the contractor looked at and did not think that it will be necessary but they will not know for sure until they start the work.

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

Mr. Seegel moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to grant a special permit and make a finding that the proposed structure will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

ZBA 2022-19, 372 WASHINGTON STREET LLC c/o THE ALEVIZOS GROUP, 372 WASHINGTON STREET

Present at the public hearing was Matt Burke, representing DISH Wireless LLC.

Mr. Becker said that there was some discussion among the Board as to whether a special permit is needed for this project. Mr. Seegel said that a careful reading of the Zoning Bylaw indicates that a permit can be issued as of right.

Mr. Burke said that they got direction from the Building Department that a special permit was needed. He said that they are indifferent to the relief as long as they can co-locate at 372 Washington Street.

Mr. Becker said that the bylaw allows a height of building plus 12 feet and this will be less than that.

Mr. Becker said that the Board could grant a special permit, even though it feels that it is not required. Mr. Burke said that a letter from the Board stating that a special permit is not required would be sufficient. Mr. Seegel said that if the Building Inspector has a problem with that, the Board will issue a special permit.

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

ZBA 2022-20, CHRISTOPHER & KIMBERLING EBELING, 38 SEAWARD ROAD

Present at the public hearing was Christopher Ebeling, the Petitioner, who said that the request is for relief for an existing nonconforming setback. He said that he and his wife are looking to do a renovation and a small addition on the back of the house. He said that they are planning to enclose an existing deck and square off the back of the house. He said that the area that they are planning to renovate was an addition that was put on in the 1980's and does not match the rest of the house. He said that the plan is to reconstruct it in a style that is more consistent with the original architecture. He said that they spoke with their neighbors about the plans. He said that the house is 2,600 square feet and is one of the smaller houses in the neighborhood. He said that both neighbors are supportive. He said that the one who is directly adjacent to them wrote a letter of support.

Mr. Sheffield confirmed that there will be no additional air conditioners. Mr. Becker said that several of the Planning Board recommendations included a recommendation that no air conditioners be located in the setbacks.

Mr. Becker said that the proposal is for a small addition on the side where the nonconformity is on a lot that is nonconforming in size.

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

Mr. Becker read the Planning Board recommendation.

Mr. Seegel moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to grant a special permit, as requested.

ZBA 2022-22, CAROLYN & BOTOND KISS, 18 MASSASOIT ROAD

Present at the public hearing was Carolyn Kiss, the Petitioner, who said that the request is for relief to build an addition above the garage and possibly extend a dormer across the back. She said that there are two points on the house that are nonconforming, one in the front left at 29.6 feet and at the back right corner.

Mr. Becker asked about TLAG calculations.

Ms. Kiss said that the proposed addition will have two bedrooms and one bathroom, for a total of 481 square feet. She said that total living area of the existing house is 2,046 square feet.

Mr. Becker said that the 3D views were helpful in understanding the dormers and where they stop.

Mr. Sheffield commented on the boxy eyebrow over the garage doors shown on Plan Z.5. He said that with three stories of façade, adding an eyebrow over the garage door with lighting underneath the eyebrow would be attractive and would help the scale of the house.

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

Mr. Becker read the Planning Board recommendation.

Mr. Seegel moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to grant a special permit, as requested.

Ms. Kiss said that they talked about adding an eyebrow but wanted to wait to see what structure is behind the existing one. Mr. Sheffield said that the existing eyebrow is not attractive but a new one would be.

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

Present at the public hearing were David Himmelberger, Esq. and Marianne Burke, LS Burke Realty, LLC.

Mr. Himmelberger said that request is for modification of an existing variance, ZBA 77-4. He said that the requested relief to construct an additional one story garage bay with less than required left side yard setback of 10.2 feet. He said that the existing building has a nonconforming left side yard setback of 19.7 feet. He said that the existing lot is nonconforming due to lot coverage of 3,790 square, or 23 percent. He said that by adding an additional 333 square feet, the lot coverage will increase to 4,123 square feet, or 25.4 percent. He said that the lot is located in a General Residence District on Washington Street, the Lower Falls Commercial District and an SR 10 District. He said that the proposed bay on the left side of the lot has a medical office as the abutter located within feet of the common property line. He said that the owner will be remodeling some of the interior and will move into one of the two existing bays. He said that they require two bays for their business. He said that this is an appropriate modification of the existing variance that was granted in 1977 that is to continue so long as the operation continues at the funeral home. He said that the Board has typically applied a substantially more detrimental determination for analysis when viewing modifications of variances and if the Board does that here, it can conclude that it will not be substantially more detrimental to the neighborhood than the pre-existing nonconforming structure. He said that the passageway on the left side will remain the same, approximately 10 feet. He said that one of the conditions in the variance originally was that cars entering from Crescent Street also exit onto Crescent Street. He said that there are a few parking spaces along the left side drive.

Mr. Seegel asked when the original variance was issued. Mr. Himmelberger said that beginning in 1953, special permits were always issued and renewed. He said that in 1977 it was converted to a variance, contemporaneously with the recodification of the State Zoning Law.

Mr. Becker asked about traffic in and out of the new garage with cars parked in the spaces. Mr. Himmelberger said that the van is parked in one of the bays and the other bay is used for intake. He said that the bays are not in active use when the building is visited by guests.

Mr. Seegel moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to modify the variance granted in 1977-4, and make the same findings from therein that a 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 and topography of the land and especially affecting this land but not generally affecting the Zoning District in which it is located, and the hardship is not self-created, and desirable relief may be granted without substantial detriment to the public good and without nullifying substantially from the intent and purpose of the Zoning Bylaw.

ZBA 2022-24, WELLESLEY COLLEGE, 106 CENTRAL STREET, (TENNIS COURTS)

Present at the public hearing were Megan Buczynski, P.E., Activitas, and Chris Ridge, Wellesley College.

Ms. Buczynski said that the project before the Board is for Site Plan Approval for renovations at the tennis courts. She said that the site is at Wellesley College's athletic complex at the Paintshop Pond complex which is under an Activity Use Limitation (AUL). She said that Haley and Aldrich is working on Release Abatement Measure Plan (RAM).

Ms. Buczynski said that the plan is to take eight existing courts and reduce them down to six. She said that they will remove six trees, all outside of the tree bylaw. She said that they will raise the site up. She said that because the site is on the AUL, they are trying to reduce any removal of soils. She said that the site follows the slope of Route 135. She said that they will raise the site up two feet and will maintain the character of the site. She said that the views will not change from Route 135. She said that they will not reduce any of the vegetation along Route 135. She said that the existing site has lighting for the tennis courts. She said that there are currently 23 poles with metal halide lights that throw light everywhere. She said that they will replace them with new LED light fixtures and poles. She said that they will reduce down to 22 fixtures. She said that they will be able to focus the light more onto the courts. She said that light levels will be less than one foot candle at the property line. She said that they are asking for relief from the maximum requirement of 75 foot candles. She said that NCAA prefers to have 75 average foot candles. She said that, in order to get the average, they have some above and some below. She said that they are asking for relief with the intent that the average is 75 and at the property line it will be less than 1 foot candle. She said that they are also asking for relief for the shielded luminaires. She said that they have them along Route 135 to reduce any spill behind, going towards the road area. She said that in order to reach the preferred foot candle levels, not all of the lights can be fully shielded. Mr. Sheffield confirmed that they will be adjustable after installation.

Ms. Buczynski said that the project was reviewed and commented on by the Engineering Department. She said that there was one tree by the parking lot that was erroneously shown as being removed. She said that tree will be staying. She said that Haley and Aldrich provided a memorandum that addressed the question of why the asphalt will be kept in place.

Ms. Buczynski discussed drainage improvements. She said that they will be reducing impervious surface. She said that they will collect some runoff and put it into a leaching basin. She said that anything that does not leach into the ground will continue to flow in the same pattern as it does now.

Ms. Buczynski said that grading at the site triggers Site Plan Approval but it is more of a renovation in kind of what is there today.

Mr. Becker asked about the use of courts. He said that it was intended to get up to NCAA standards. He asked if the courts will only be used for competition. Ms. Buczynski said that they will be open to other segments of the school population. She said that they are used day and night. She said that the lights will be controlled on a digital system to go on and off at a set time but it can be overridden.

Mr. Becker questioned whether a special permit would be required for lighting under Section 16 of the Zoning Bylaw. Mr. Seegel said that it will be covered under the Site Plan Approval.

Mr. Sheffield asked about the truncated corners on the courts. Ms. Buczynski said that they are trying to reuse the existing fence posts. She said that where they can, they will leave the fence posts in place and sleeve over with new fencing, so that they are not removing material and having to dig again.

Mr. Becker asked if pre-cast, pre-stressed concrete would be used if this was not under an AUL. Ms. Buczynski said that they would use it. She said that asphalt in general is not what is used to be because they put some much recycled material into it. She said that asphalt does not last. She said that post tension concrete will be warrantied for 25 years. She said that there is a greater up front cost but the longevity to not have to go back in and patch impacts the long term costs. She said that from the data that they have seen so far, it does not seem to be harder on the joints.

Mr. Becker confirmed that the existing light poles are 24 feet high. Ms. Buczynski said that they will basically just replace the bulbs.

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

Mr. Seegel asked how Mr. Saraceno's comments will be addressed. Ms. Buczynski said that the changes will be incorporated.

Mr. Becker read the Planning Board recommendation.

Mr. Becker said that the Board appreciated the complete package that was submitted.

Mr. Sheffield asked why the number of courts will be reduced. Mr. Ridge said that it was based on demand. He said that two of the courts do not get used.

Mr. Seegel moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to grant Site Plan Approval.

As there was no further business to come before the Board, the hearing was adjourned at 9:37 pm.

Respectfully submitted,

Lenore R. Mahoney
Executive Secretary