



ZONING BOARD OF APPEALS

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WALTER B. ADAMS
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RICHARD L. SEEGEL

April 6, 2023

7:30 pm

Schuler Room, Tolles Parsons Center

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

BUSINESS MEETING

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

Mr. Becker said that the Applicant is requesting an extension for a special permit. He said that the Applicant had discussions with Mr. Grant, Building Inspector, about minor changes. He said that the Applicant wanted to extend the special permit in case he cannot line up a contractor by July 15, 2023.

Mr. Sheffield asked if the Applicant requested a specific date for the special permit to be extended to. Mr. Becker said that he did not request a specific date. Mr. Seegel proposed that the special permit be extended for one year from the date of expiration.

Mr. Sheffield moved, Mr. Seegel seconded the motion, and the Board voted unanimously to extend ZBA 2021-54 for one year, to expire on July 15, 2024.

PUBLIC HEARING

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

Mr. Becker said that the revised plans were not delivered until yesterday. He said that the petition would be continued to May 4, 2023.

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

David Himmelberger, Esq., said that he represents the applicant. He asked if the petition will be heard de novo on May 4, 2023. Mr. Becker said that issue will be taken up later.

Mr. Sheffield moved, Mr. Seegel seconded the motion, and the Board voted unanimously to continue the petition to May 4, 2023.

ZBA 2023-04 AMIR KRIPPER, 28 CRESCENT STREET

Present at the public hearing was Amir Kripper, the Petitioner, who said that through a special permit they were allowed to build an addition to the house that was originally built in 1875. He said that he is asking for relief for the location of the ac condensers. He said that the ac condensers have nonconforming setbacks at

the rear. He said that he was before the Board in March of 2023. He said that Board requested that he get the date of the condensers to show that they were installed prior to the enactment of the bylaw on April 14, 2002. He said that the ac condensers were installed in January or February of 2002.

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 approved relocation of the ac condensers, as shown on plan.

ZBA 2023-15, FR LINDEN SQUARE, INC., 188 LINDEN STREET (CVS)

Present at the public hearing was Brian Levey, Esq., representing CVS Pharmacy. Mr. Levey said that the request is to renew the special permit for the drive through at 188 Linden Street. He said that he conferred with the store manager, who confirmed that the drive-through is in good physical condition. He said that they are reporting no problems with vehicular or pedestrian traffic. He said that the request is for further extension of the special permit.

Mr. Seegel said that the second lane does not appear to be in use. He said that there is no equipment for from the car to the store. He asked if there is any necessity to keep maintaining it. Mr. Levey said that the amount of traffic that comes through the store varies greatly, particularly during COVID when the second lane was in constant use. He said that usage has been down recently but sometimes it goes up again. He said that CVS would not be looking to close it. He said that should there be another health crisis, it would be good to have the lane stay in place.

Mr. Levey said that the hours of operation will not change. Mr. Sheffield said that the permit says that the lights shall be turned off by 10 pm or the close of business. He asked if there is 24 hour service at the drive through. Mr. Levey said that he did not believe so.

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

Mr. Sheffield moved, Mr. Seegel seconded the motion, and the Board voted unanimously to renew the special permit for a period of three years, subject to the same conditions.

ZBA 2023-16, SIP PARTNERS 984 WORCESTER ST (CVS)

Present at the public hearing was Brian Levey, Esq., representing CVS Pharmacy. Mr. Levey said that he conferred with the store manager about renewing the special permit. He said that the manager confirmed that the drive-through is in good condition and there have been no issues with pedestrian or vehicular traffic.

Mr. Sheffield said that this location seems to have gotten busier as time has gone on. He said that people discovered its location.

Mr. Sheffield said that in a prior approval, the Board put a lot of consideration about right and left hand turning. He said that there was a prohibition for going straight through. He said that since it is a State highway, the Town did not have jurisdiction over the signage. He said that there is no there that prohibits going straight through.

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 renew the special permit for a period of three years.

ZBA 2023- 17, 199 WORCESTER ST LLC, GARY AHARONIAN, 199 WORCESTER STREET

Present at the public hearing was Gary Aharonian, the Petitioner, who said that the request is for a used car license for up to five cars.

Mr. Sheffield confirmed that the permit is for the sale of cars, not repair.

Mr. Becker said that the request is for a use permit but there is nothing in the submittal package that tells the Board how the property will be used. He said that people taking cars out for a test drive have to enter and exit the property. He said that there was nothing submitted that talks about that. He said that the Board cannot see how it will impact the traffic on Cedar or Worcester Street, or through the parking lots that surround the property.

Mr. Becker said that the Board does not know what changes, if any, there will be in the office. He said that if there are additional people, the Board will need to see where they will park.

Mr. Becker said that there was not much information submitted that tell the Board how the Applicant means to use the property.

Mr. Aharonian said that he does have the location for five or six cars. He said that he is using the repair area for minor jobs such as oil changes.

Mr. Becker said that the Board understands where the Applicant means to have the cars that are up for sale parked. He asked if there will be any new signs that indicate to the general public that they have autos for sale. Mr. Aharonian said that he currently does not have signs for that. Mr. Becker said that signs would be covered under a different permit.

Mr. Seegel said that the Board previously granted a special permit to rehab the station. He confirmed that the rehab did not happen.

Mr. Seegel recommended that the Board continue the petition to give the Applicant time to give the Board additional information about circulation of the vehicles, queuing lanes, and parking for additional employees.

Mr. Aharonian said that he provided a plot plan and pictures. Mr. Becker said that the pictures do not show the same thing as the plot plan. He said that the pictures show the cars parking on the grass so that they do not encroach on the concrete slab that is on top of the gas tanks. He said that the Applicant has not told the Board about the impact, if any, that the cars for sale have on the deliveries of gasoline.

Mr. Aharonian said that the cars will be parked away from the tanks. Mr. Becker said that the plot plan shows it overlying the slab that is on top of the tanks. Mr. Aharonian said that there is a lot of room between the tanks and where the cars will be parked. Mr. Seegel said that the only thing that will be in the ZBA records show cars encroaching on the concrete pad where the tanks are. He said that the Board will need to see a new plan that shows where the cars will be so that they will not encroach on the tanks. Mr. Aharonian said that the engineer drew up the plan that way.

Mr. Becker said that the drawing shows the parking spaces overlying the tanks.

Mr. Seegel said that he did not think that the Board had a problem with the concept of cars for sale but it needs more information including a new plot plan that shows where the cars will be on the ground. Mr. Becker said that there should a letter that explains some of the issues that the Board talked about so that there is a basis in the record and the building inspector can enforce the permit. He said that the letter should

explain how they will be using the property to bring cars in, whatever people will be coming in and out that are going to work selling the cars, how buyers of cars will enter and exit, and discussion of any signs or saying that there will be no signs. He said that the Board needs a basis for understanding what the use of the property will be.

Mr. Sheffield said that the pictures show plant materials between the cars and the off-ramp from Route 9. He said that there should be an explanation of whether those plans are merely decorative or are there for screening. He said that the plants are currently small and the Board will want to know if they will be getting bigger and what kind of plants they are.

Mr. Sheffield said that the drawing showed five cars. He said that Mr. Aharonian mentioned five or six cars. Mr. Aharonian said that the space will be for five cars.

Mr. Sheffield moved, Mr. Seegel seconded the motion, and the Board voted unanimously to continue the petition to May 4, 2023.

ZBA 023-18, JAMES & SHARON MURRAY, 45 PINE PLAIN ROAD

Present at the public hearing was James Murray, the Petitioner, who said that he and his wife are the homeowners at 45 Pine Plain Road. He said that the request is to add a 1.5 story attached one bay garage at the side of their main house. He said that the request is for a variance because the addition will encroach into the required setbacks. He said that if were to try to meet those setbacks, it would impose hardships on their project. He said that the main reason to attach the garage is to allow indoor access from the house into the vehicle. He said that his wife has MS and she experiences muscle fatigue, imbalance and muscle spasms. He said that there is a risk if she is walking outside during inclement weather. He said that they have a doctor's note that explains that. He said that they want to provide indoor access from the vehicle to the house and an attached garage provides that.

Mr. Murray said that if he was to abide by the setbacks, he would have to put the same size structure in the back yard. He said that would impose hardships in that they would have to walk outside to get to the garage deny the medical benefit of having an attached garage, and would increase the cost of the structure. He said that a stand-alone garage would require four walls and would take up most of the back yard, reducing the property value. He said that the driveway would have to be extended, where the currently proposed garage would require a shorter one.

Mr. Seegel asked if Mr. Murray discussed the plans with the neighbor on that side. Mr. Murray said that he had. Mr. Seegel asked if the neighbor had any objections. Mr. Murray said that there were no objections.

Mr. Sheffield discussed architectural details on the front façade of the house.

Mr. Sheffield said that in the differential in floor elevation between the house and the garage, the garage has to be lower. He said that the steps, as shown on the plan, don't work. Mr. Murray said that the house has a step down within it from the main floor because of a basement access. Mr. Sheffield said that the entry and the closet are at the garage level. Mr. Murray said that the house is two steps higher than the garage. Mr. Sheffield said that the drawing seems to show steps in that area as you approach the door from the garage which are very misleading. Mr. Becker said that the plan shows that, in order to exit from the garage into the house, you don't start at the bottom of the stairs and go up but rather you come along the tread to get on the stairs. Mr. Murray said that if you go in from the garage into the house, there is a platform that is one level high and then you step up to the door to the mudroom. He said that at that point you are level with the main house at the top of the basement stairway. Mr. Sheffield said that it is not a Zoning issue but is a building inspector issue.

Mr. Becker asked what will be happening upstairs in the garage. Mr. Murray said that it will be unfinished. He said that it is not meant to be livable space at this time. He said that there will be access from inside the house.

Mr. Sheffield said that no second floor plan was submitted. Mr. Becker said that the Board could not see how the house was connected to the area above the garage.

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

Mr. Becker read the Planning Board recommendation.

The Board discussed the basis for the variance request. Mr. Becker described the variance standards. Mr. Seegel said that the substantial hardship of MS relates to the shape of the lot.

Mr. Sheffield said that a plan should be submitted that shows the second floor above the garage.

Mr. Seegel moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to approve a variance and make a finding that literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, in that the Petitioner's wife has MS, owing to circumstances relating to the shape of the lot, which does not generally affect the zoning district in which it is located, the hardship has not been self-created, and desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw, subject to a condition that a second floor plan of the area above the garage be submitted.

ZBA 2023-19, PATRICK & DEIRDRE BLOMBERG, 167 WALNUT STREET

Present at the public hearing Brian Alim, Architect, Patrick and Deirdre Blomberg, the Petitioner.

Mr. Alim said that the request is for a special permit to build a new addition off of the back on a nonconforming lot. He said that the project includes a lower level basement garage, first floor kitchen and breakfast room, and second floor bedroom suite. He said that the lot is undersized at 8,153 square feet in an SR 10 District. He discussed existing and proposed setbacks. He said that the new addition will meet the existing right side yard setback of 10 feet and will extend 15 feet further into the rear yard. He said that the front and left side yard setbacks will not be impacted by the new work. He said that total lot coverage will be within the maximum of 25 percent. He said that as part of the work, they will be installing a drywell at the rear of the property.

Mr. Seegel confirmed that it will be a one car garage.

Mr. Alim said that the ridge height of the existing and proposed structure will be 32.5 feet.

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

Mr. Becker read the Planning Board recommendation.

Mr. Sheffield confirmed that a drywell will be installed. Mr. Alim said that there will be a drain in the driveway by the door that will feed into the back yard. He said that the existing back yard is bowl shaped. He said that they will fill it in and flatten it out as well as add a stormwater drainage system underneath.

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

ZBA 2023-20, FRANCISCO TRIANA, 96 WOODSIDE AVENUE

Present at the public hearing were Amber Galko, Architect, Francisco Triana and Benjamin Patience, homeowners.

Ms. Galko said that the request is for a special permit to renovate an existing single family home by adding an additional floor. She said that they are seeking Zoning relief for existing nonconforming lot area and side yard setbacks. She said that the proposed construction will be within the existing footprint. She said that an optional chimney is shown on the plans that will extend into the setback but that will not be built. Mr. Becker said that if the chimney was changed from 2.5 feet to 2 feet, it would be permitted as of right because the 9.5 foot nonconformity would be unchanged. He said that the bylaw definition of Side Yard excludes chimneys. Ms. Galko said that they spoke with the neighbors, who had concerns about the air conditioning (ac) condensers. She said that they thought that the ac condensers might be better placed where the chimney is shown.

Ms. Galko said that the site is very sloped with a 6 foot grade difference, with the back being high and the front being low. She said that design proposal includes renovating the existing walk out basement. She said that the main entry will be on the first floor at the rear side of the property leading into the main living area and kitchen. She said that bedrooms and bathrooms are proposed for the second floor. She said that there will be finished attic space. She described the exterior materials.

Mr. Becker asked about the location of the ac condensers. He said that the ac condenser that is shown on the architectural plan, A-3, is not shown on the plot plan. He said that it will be in the setback. He said that if it is a heat pump, it will meet the exemption that was added to the bylaw last year but there is nothing in the application that suggests that is the case. Ms. Galko said that it will be mini split heat pumps. Mr. Becker said that something needs to be submitted that shows that. Ms. Galko said that they will also look at pulling the units closer to the front on the other side. She said that they can submit revised plans to show where the units will be located.

Mr. Becker said that the property is located in a Water Supply Protection District. He said that he did not see anything that talked about runoff. He said that the bylaw talks about what needs to be done to meet the requirements and demonstrate that stormwater that runs off the proposed facilities will be handled in some way or demonstrate that the soil is such that you do not need to think about those things. Mr. Sheffield said that there is no stormwater collection on Woodside Avenue. He said that everything runs down to Reed's Pond.

Mr. Sheffield confirmed that the chimney will be eliminated. He said that the drawings should be revised to show that.

Mr. Sheffield said that the Front Elevation drawing shows brick and the Side Elevation shows stone. Ms. Galko said that it will be all ledge stone.

Mr. Sheffield said that the Board received a letter from a neighbor.

Mr. Seegel said that it seems like the proposed structure will create a huge block to the property to the north. He said that the Petitioner is trying to put too much house on a very small lot. He said that the plan has to be re-thought. He said that they would have to take off the third floor. He said that they have to take blocking 102 Woodside Avenue into consideration. He said that he has a problem with the proposed plan and could not vote approval for it. He said that the Petitioner should consider withdrawing the petition without prejudice and come up with something that satisfactory to themselves and the neighbor. He said that the proposed structure would be substantially more detrimental to the neighborhood.

Ms. Galko said that they tried to stay within the allowed height. She said that it is a small site that is close to the neighbors. She said that they believed that the proposed square footage was in line with the rest of the neighborhood.

Mr. Becker read the Planning Board recommendation.

Mr. Becker explained the option for withdrawing the petition without prejudice versus denial of the petition.

Ms. Galko requested that the Board allow the petition to be withdrawn without prejudice.

Mr. Sheffield said that the height of the house was a concern. He said that solar collectors and putting clerestory windows at the top exacerbates the problem of height. Ms. Galko said that they were trying to minimize the appearance of the attic space from the street. She said that there are no windows on the street side, so they used clerestory to get light into the space. She said that they did want to maximize the area for the solar panels.

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

Langdon Andrews, 102 Woodside Avenue, said that he spoke with Mr. Triana regarding the proposed renovation. He said that his concern is that it will be too much house for such a small lot. He said that the extreme height of the building would severely impact his and his neighbors' houses. He said that they will lose their sun for quite a bit of the year for quite a bit of the day. He said that there are three houses that are close together. He said that his concerns are about the size of the house, the small lot and detrimental impacts on the neighbors.

Jeff Hamilton, 94 Woodside Avenue, said that the proposed structure will be too high and would be all that he would see looking out of some of his windows.

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

ZBA 2023-21, 1 SPRINGDALE LLC, 1 SPRINGDALE AVENUE

Present at the public hearing were David Himmelberger, Esq. and Scott Henderson, Civil Engineer.

Mr. Himmelberger said that this is owned by the neighbors across the street at 2 Springdale Avenue. He said that they purchased this property with the hope of protecting their home and building something that is in keeping with their home and others in the immediate vicinity.

Mr. Himmelberger said that the existing home sits on the corner of Springdale Avenue and Glen Road and has two front yards and two side yards. He said that both existing front yard setbacks are nonconforming, with the Glen Road setback at 26 feet and the Springdale Avenue setback at 29.3 feet. He said that the existing house was built prior to 1949. He said that the Historical Commission determined that the house was not preferably preserved. He said that the property is substantially in a wetlands buffer zone abutting a pond at the rear of the property, which slopes down steeply 8 feet from Springdale Avenue. He said that an Order of Conditions was recorded.

Mr. Himmelberger said that the location of the proposed house is constrained by and located just beyond that 25 foot wetlands no disturb buffer. He said that the proposed home will slightly improve the Glen Road front yard setback of 27 feet and the Springdale Avenue front yard setback. He said that they will maintain the body of the house at 31.3 feet, with the front porch set back at 26.3 feet. He said that due to the drop off of the lot from Springdale Avenue to the pond at the rear, the height of the home from average original grade

will be 35.7 feet, which is similar to the house across the pond. He said that the height of the house facing Springdale Avenue will be 31 feet high.

Mr. Himmelberger said that the existing driveway is accessed from Glen Road, which is not optimal because Glen Road is a busy thoroughfare. He said that the driveway will be relocated to Springdale Avenue, which will make for a far safer entry and exit.

Mr. Himmelberger said that the house was designed as a Greek Revival style, similar to others in the neighborhood at 2 Springdale Avenue, 51 Glen Road and 7 Waterway. He said that believe that the house will not be substantially more detrimental to the neighborhood than the existing structure. He said that the Planning Board recommended approval.

Mr. Becker asked about the 1948 relocation. Mr. Himmelberger said that the right of way was relocated closer to the existing home and that is what gives the existing nonconformity of 26 feet. He said that they will be coming in from Springdale Avenue and avoiding the bend on Glen Road. Mr. Becker said that he was looking at the sensitivity of moving the home away from Glen Road by 3 feet and taking 40 square feet off of the porch so that the structure would comply with the bylaw. He said that they would still have the lot size issue. Mr. Henderson said that driving factors of wetlands and location of the house are shown on the plan. He said that there is a 48 inch diameter tree that is located just south of the existing and proposed houses. He said that the plan is to maintain it as a specimen tree that is of great value. He said that it was a topic of discussion with the Wetlands Protection Committee and is also a substantial vegetated buffer. He said that location of the house is as close as reasonable to the root structure of the tree. He said that there is a plan to fertilize the tree on a regular basis, following construction. Mr. Becker said that if the 27 feet to Glen Road is actually bigger than 27 feet, it makes the problem a little smaller. Mr. Henderson said that he tried to get confirmation from the town that the 1948 plan was accepted but was unable to get it. Mr. Himmelberger said that it is nonconforming on that side but one is not allowed to take credit for what is effectively tree lawn. He said that there is a substantial tree lawn area between the property line and the granite curbing on Glen Road, further minimizing the fact that it is not a full 30 foot setback from the property line.

Mr. Becker asked how this is not considered to be a side facing garage. He said that they will be coming in from Springdale Avenue and turning left from the side. He said that they do not have 30 feet. Mr. Himmelberger said that the garage faces a front yard. He said that it is not a side facing garage because it faces Glen Road.

Mr. Becker read the Planning Board recommendation.

Mr. Sheffield confirmed that the drawings were done by Vivian Wilson. He complimented them as being well done.

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

Mr. Seegel moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to grant a special permit, subject to a condition that the recorded Order of Conditions be incorporated in this decision.

ZBA 2023-22, CHRISTOPHER DeLISLE, 25 WELLESLEY AVENUE

Present at the public hearing were David Himmelberger, Esq. and Christopher DeLisle, the Petitioner.

Mr. Himmelberger said that the request is for a variance to raze a nonconforming detached garage and build an attached, side facing garage with two floors of living space above it with less than the required 30 foot side yard setback. He said that the relief being sought is for 28.5 feet.

Mr. Himmelberger said that the home is pre-existing nonconforming due to insufficient front yard setback of 24.6 feet and a right side yard setback of 18.1 feet. He said that those setbacks will not change. He said that the home sits on a conforming lot for area of 10,413 square feet in a General Residence District. He said that the shape of the lot is a triangle, which is the basis for the variance request. He said that the property is in a riverfront wetlands buffer zone and abuts Fuller Brook. He said that an Order of Conditions was previously obtained from the Wetlands Protection Committee. He said that the existing driveway will remain as the access for the new attached garage. He said that it abuts the abutter's driveway at 23 Wellesley Avenue, who sent an email in support of the project. He said that the proposed addition will result in a TLAG of 3,792 square feet. He said that the roof height will be unchanged at 28 feet 8 inches. He said that lot coverage will increase slightly from 1,513 square feet to 1,622 square feet, or 14.5 percent to 15.6 percent. He said that the Planning Board recommended favorable support of the request for a variance.

Mr. Sheffield said that Plan A2 shows no windows in the garage but Plan A3 does. He said that the plans need to be coordinated. Mr. Himmelberger said that there is a discrepancy. He said that they would prefer to have the window. He asked if the Board would accept a condition that a revised A2 Plan be submitted.

Mr. Sheffield said that on Plan A2, there should be a step up from the garage into the house. Mr. Himmelberger said that they will build to code.

Mr. Sheffield asked about the dimension of 28.5 on the Site Plan. He asked if that dimension is to the face of the wall or to the property line. Mr. Himmelberger said that dimension is from the face of the garage to the property line. He said that a proposed wall will be interior to the property line. He said that the as-built plan will have to reflect that the garage is 28.5 feet from the property line.

Mr. Becker said that the driveway at 23 Wellesley Avenue has nothing to do with 28.5 foot setback and mitigating the side facing garage. Mr. Himmelberger said that his point was only that it abuts another driveway.

Mr. Sheffield asked about the height of the proposed wall. Mr. Himmelberger said that the retaining wall will be less than 4 feet. He said that it went through Wetlands Protection Committee review because it is in the 200 foot Riverfront Buffer. He said that it has to be less than 4 feet. He said that they can show the top and bottom of the wall on the plan as a condition of the decision.

Mr. Sheffield moved, Mr. Seegel seconded the motion, and the Board voted unanimously to approve a variance and make a finding that literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, owing to circumstances relating to the shape of the lot, which does not generally affect the zoning district in which it is located, the hardship has not been self-created, and desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw, subject to conditions that a plan that shows the dimensions of the top and bottom of the retaining wall be submitted and that the Order of Conditions shall be incorporated in this decision.

As there was no further business to come before the Board, the hearing was adjourned at 9:00 pm.

Respectfully submitted,

Lenore R. Mahoney
Executive Secretary