

**ZONING BOARD OF APPEALS**

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WALTER B. ADAMS
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RICHARD L. SEEDEL

May 4, 2023

Schuler Room, Tolles Parsons Center

7:30 pm

Zoning Board of Appeals Members Present: Robert W. Levy
 Walter B. Adams
 Richard L. Seegel

Mr. Levy said that he would like to recognize his colleague and mentor, Dick Seegel, who was appearing for the last time as a member of the Zoning Board of Appeals. He said that Mr. Seegel has been on the Board since 1999 and served most of those years as Chair. He expressed his gratitude for Mr. Seegel's leadership and his help to all of the Board members getting through the difficult issues that the Board has to deal with. He said that the Zoning Board of Appeals members are volunteers who do this work out of town spirit. He said that Mr. Seegel has devoted a substantial amount of his time to those efforts. He said that, on behalf of the Board, he wanted to express the Board's gratitude for his service.

BUSINESS MEETING**ZBA 2008-43, PATRICIA MURPHY, 48 PARKER ROAD**

Present at the Business Meeting was Michael Grant, Inspector of Buildings/Zoning Enforcement Officer, Town of Wellesley.

Mr. Grant said that he received a complaint from an abutter of 48 Parker Road regarding issues with a sports court. He said that following review of the property and approvals granted by the town, it was determined that sometime between 2021 and 2022 a fair number of mature trees on the property were cut down. He said that a condition of the Board's decision, ZBA 2008-43, was that all mature trees except for the one that had suffered winter damage should remain on the property. He said that his request was for the Board's guidance as to how to proceed with respect to violation of the condition.

Mr. Levy confirmed that there was no allegation of violation of the Tree Bylaw. Mr. Grant said that the bylaw did not exist at the time that the special permit was granted.

Mr. Adams asked about the dates of the two aerial photographs that Mr. Grant provided. He said that one of them shows the trees and one of them shows a clear view of a basketball court. Mr. Grant said that the photographs were pulled off of the town's GIS system for 2021 and 2022.

Mr. Levy said that this is not a typical request that comes before the Board. He said that Mr. Grant is the Code Enforcement Officer and typically he should be deciding what to do. He said that if someone is aggrieved by his decision, they can come before the Board. He said that the Board does not usually give advisory opinions. He said that it is a violation of a special permit and the Building Inspector has remedies such as fines or injunction.

Mr. Grant said that there is only one remedy under the Zoning Bylaw, Section 6.1 Enforcement of Penalties, sub-section H. He said that he can impose a fine of \$300 a day and each day is a separate offense. He said that the trees are gone. He asked how long he should fine for. He said that he has never run into a situation where a condition of a special permit was violated and there was no avenue to correct it. He said that after consulting with the Town's Executive Director, the suggestion was made to bring the issue before this Board.

Mr. Levy asked if it is the same owner. Mr. Grant said that the original applicant was Patricia Murphy. He said that what he has on file now is Jill and Lane Murphy. He said that before he did any enforcement action, he wanted to get the opinion of the Board.

Mr. Levy asked if Mr. Grant knows how many trees were taken down. Mr. Grant said that he did not know for sure but his guess, based on the aerial photographs that he submitted, is that there could be as many as four or more. He said that there is no direct eyesight access to the back yard.

Mr. Seegel said that in 2008, Parker Road was somewhat untouched. He said that there were a lot of small single family homes. He said that this was one of the first teardowns and construction of a mansion type home. He said that it is a big lot. He said that there are houses all around it. He said that one of the Board's concerns was that because they would be building such a large house, they should shelter it with the big trees around it. He said that the current situation was precipitated by neighbors complaining about the lights and noise at night. He said that that was why the trees should have remained. He said that if the tree bylaw had been in effect, the trees would have never been cut down. He said that, at a minimum, the property owners should be fined on a daily basis. Mr. Levy said that the property owners could have cut the trees down and then paid into the tree fund.

Mr. Seegel said that this also pre-dates Large House Review (LHR). He said that the Planning Board would likely have had conditions for the trees, lighting and noise. Mr. Grant said that because this project required a special permit, LHR would not apply.

Mr. Grant said that he met with the Complainant and heard that the issues dealt more with the sports court. He said that the Complainant said that they reached out to the neighbors but it seemed to fall on deaf ears.

Mr. Levy said that one means of resolution could be that the property owners at 48 Parker Road come back before the Board to seek modification of the decision. He said that the Board could then impose some additional conditions to rectify the problem. He said that Mr. Grant can reach out to the property owners at 48 Parker Road and say that it is his intention to start fining them within 30 to 60 days, which will give them the opportunity to go back to the ZBA to see if a remedy can be worked out that would satisfy the Board and the neighbors.

Mr. Adams asked Mr. Grant about his use of the fining process in the Building Department. Mr. Grant said that he has the ability to fine for non-criminal dispositions for building and zoning violations. Mr. Levy said that the Board would prefer a resolution that is acceptable to the neighborhood rather than fines. Mr. Grant said that his only avenue is to fine them \$300 a day. He said that in this case, there is no way to correct it. He said that the condition was clear that no trees were to be cut.

Mr. Adams said that he looked at the Zoning Bylaw to see if there is an avenue to regulate lighting on the premises and whether the basketball court is considered to be a recreational use. He said that the bylaw talks about both a commercial or private use. He said that he did not think that the town typically wants to tell people how to regulate their properties and whether they should be able to build a tree house or have a basketball court close to someone else's property. Mr. Levy said that this is not much different than having a pool. He said that pools have to meet setbacks.

Mr. Seegel said that a good solution is to put the property owners at 48 Parker Road on notice that 30 to 60 days from now, Mr. Grant will start assessing the fine and he would like for them to come in to discuss that and any alternatives with him. Mr. Levy said that as long as that condition exists, Mr. Grant has to enforce it and the only way to alter that is to come back before the Board.

Mr. Grant said that there are timelines for enforcement that he has to follow but he can work with the property owners. Mr. Levy said that the property owners can apply to come back before the Board within 30 days and then be scheduled at the Board's discretion.

Mr. Seegel said that if Mr. Grant imposes the fine and the issue can't be settled between the neighbors, the property owners and the neighbors can appeal to the Board and then the Board can deal with the decision as it is written. Mr. Levy questioned whether the Board can modify the decision on the appeal of a fine. Mr. Grant said that an appeal of a non-criminal disposition would go to Court, not back to the Board. Mr. Seegel said that Mr. Grant can suggest to the property owners that the Zoning Board can modify the special permit.

Mr. Adams said that if this comes back before the Board, any decision that the Board makes could be to modify or relocate the basketball court. Mr. Levy said that the Board could condition lighting and sound.

Mr. Adams requested that Mr. Grant report back to the Board at an appropriate time when he feels that there is some news to let the Board know about. Mr. Grant said that he will send a copy of the letter that he sends to the property owners at 48 Parker Road.

PUBLIC HEARING

ZBA 2023-17, GARY AHARONIAN, 199 WORCESTER STREET

Mr. Levy said that, at the request of the Applicant, the hearing would be continued to July 6, 2023.

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

ZBA 2023-07, KRASSEN DRAGANOV, 2 DALE STREET

Mr. Levy said that the petition would be heard de novo.

Present at the public hearing were David Himmelberger, Esq., and Bill Parquet, representing the builder for the owner.

Mr. Himmelberger said that the request is for a special permit. He said that the property is located adjacent to and behind the sports center on the outskirts of town. He said that the petition was previously before the Board on February 2, 2023, at which time the Wetlands Protection Committee (WPC) Administrator had written to the Board expressing some concern. He said that there was a decision that the WPC should have a chance to review the project prior to review by the Zoning Board of Appeals (ZBA). He said that there was a misunderstanding on the part of the WPC that the project will be fully outside of the buffer zone, with no work being contemplated inside the buffer zone. He said that when that was conveyed and communicated to

Ms. Meyer, the WPC Administrator, she responded to Mr. Himmelberger and to the Zoning office that there is no jurisdictional issue for the WPC, as all of the work will be outside of the 100 foot buffer zone. He said that was one of the primary reasons for continuing the petition. He said that there was also some question around clarification of the building plans and a question about where the septic would be discontinued. He said that they provided new civil plans that clearly indicate where the septic is to be discontinued. He said that there is Town sewer in Dale Street, further down, and the plan is to connect to it. He said that they submitted a revised TLAG affidavit that confirms that the structure will be slightly under the threshold for an SRD 10 at 3,429 square feet.

Mr. Himmelberger said that the request is for a special permit because the property is nonconforming with the existing house within the setback, extending into Dale Street. He said that the proposal is to raze the existing structure and pull it back off the street so that it will be 9 feet from the front property line. He said that the civil plans show that all retaining walls will be compliant with the bylaw and show the height of the structure at 29.97 feet. He said that questions that the Board raised at the February hearing have been addressed.

Mr. Himmelberger said that the property is located in a Water Supply Protection District (WSPD). He said that a Stormwater Report was submitted that addresses stormwater impact for 2-year, 10-year, 25-year and 100- year storms. He said that existing flow rate of runoff and volume will be reduced.

Mr. Levy said that there is a lot of information on the site plan, primarily caused by the topography changes. Mr. Himmelberger said that it is built into a steep hill. He said that all grading will be away from the buffer zone. He said that water will run away from the buffer zone.

Mr. Levy asked if this will be a custom versus a spec home. Mr. Himmelberger said that he believes that it will be a spec house.

Mr. Himmelberger said that a front yard setback of 9 feet for the proposed structure will be nonconforming. He said that Dale Street dead ends at the property. He said that 1 Dale Street is shown prior to getting to the house at 2 Dale Street. Mr. Levy confirmed that there is sufficient frontage. Mr. Himmelberger said that the existing house sits over the property line into Dale Street and is also in the front yard setback. He said that the proposal is to pull it back and improve the front yard setback from zero to 9 feet. He said that the area within the setback will be reduced.

Mr. Himmelberger displayed the outline of the property and Dale Street, and the proposed paved area. He said that because it is an unaccepted private way, they will have to go to the Planning Board for review of adequacy of the way. He said that they have designed it to accommodate fire trucks and first responders. He said that the frontage will remain much the same.

Mr. Himmelberger said that the existing house will be torn down. He said that the existing septic that is located in the private way will be discontinued. He displayed the topographical contours and the wetlands buffer on an aerial view.

Mr. Adams confirmed that the design of the house has not changed or moved since the February 2, 2023 public hearing. Mr. Himmelberger said that they correctly labeled a terrace that had been labeled a deck at the rear.

Mr. Himmelberger said that the request is for relief to improve the front yard setback. He said that all other dimensional requirements will be met.

Mr. Levy asked about approaching the town about acquiring the rest of Dale Street. Mr. Himmelberger said that he has approached the town on behalf of a group of residents in the past but was told that there is no policy for doing that.

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

Mr. Levy read the Planning Board recommendation.

Mr. Adams asked about the height of the structure. Mr. Himmelberger said that when the petition was first advertised, he thought that the height would be in violation of the 36 foot maximum but when he clarified it with the Civil Engineer, he was told that it will be 29.97 feet. Mr. Himmelberger said that TLAG spot elevations are shown on Plan C1.0. He said that the roof has a shallow pitch. John Chapman, Architect, discussed how he calculated the height from average grade. Mr. Adams said that the garage door faces the newly paved Dale Street.

Mr. Himmelberger said that the sewer location on Dale Street is shown on the TLAG Plan. He said that it should be a gravity line. Mr. Levy said that the abandoned septic system is on town property. Mr. Himmelberger said that it is on the private way. He said that the other abutter is 1 Dale Street. Mr. Seegel said that they will need permission from the Department of Public Works (DPW) to remove the septic system. Mr. Himmelberger suggested a condition that the septic system be dealt with in accordance with DPW wishes.

Mr. Adams asked if the Petitioner spoke to the neighbors. Mr. Parquet said that he spoke with the neighbors. He said that the house is for sale. He said that the neighbors would like to tie into the town's sewer system as well. He said that the town was very agreeable, as long as they did not have to pay for it.

Mr. Adams moved, Mr. Seegel seconded the motion, and the Board voted unanimously to approve 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, subject to conditions that require hook up to town sewer and removal of the existing septic if required, after consultation with DPW.

ZBA 2023-24, BRIAN & TAWNEE FELICE, 17 DURANT ROAD

Present at the public hearing were Michael Hally, Architect, and Brian Felice, the Petitioner.

Mr. Felice said that he has lived at 17 Durant Road for the past 12.5 years and he loves the street. He said that years ago, they decided to build an addition for more space rather than moving. He said that they want to build a garage that can fit a full-sized truck and store things that come with a growing family. He said that the existing garage is corroded metal. He said that the new garage will add to the aesthetics from the street and the home. He said that he spoke with most of the surrounding neighbors and they had no objections to the proposed plans.

Mr. Hally said that it is a nonconforming lot in an SRD 10. He said that both the house and the garage are nonconforming. He said that the house has less than the required 30 foot front yard setback. He said that the garage is on the left side, 2.8 feet from the side lot line. He said that the garage meets the rear setback requirement at 12.2 feet. He said that the proposal is to remove the existing garage and foundation and build a new one that will measure 18 feet wide by 24 feet deep. He said that the house is somewhat modest, so storage is always an issue.

Mr. Hally said that the plan is for a simple gabled structure that faces the street. He said that it will have a cupola on top and 10 foot overhead doors. He said that they tried to make it fit into the neighborhood. He said that there is a window that is not shown on the floor plan, but is shown on the left elevation drawing.

He said that they would like to remove that window. Mr. Felice said that there are some bushes between the garage and the neighbor. Mr. Hally said that some brush will go during construction. He said that Mr. Felice and the neighbor are looking to have a cleaner landscape plan.

Mr. Levy said that he did not see the height of the structure on the plans. Mr. Hally said that it is shown on the Section Plan at 18 feet 9 inches. Mr. Levy said that the new garage will be triple the height of the existing garage. He said that they will be adding significant bulk close to the lot line. He said that the height does not include the cupola.

Mr. Levy discussed concerns about incremental encroachment and increased impervious surface. He asked if there is a drainage plan. Mr. Hally said that there is no current plan but will accept that as a condition. Mr. Felice said that there is a drywell in the back yard that was put in subject to a condition for the previous decision for the addition.

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

Mr. Levy read the Planning Board recommendation.

Mr. Adams asked if the Petitioner discussed the door on the back with the Building Inspector. Mr. Hally said that it is a hay door that will be accessed by a ladder. He said that there will be no interior stair. Mr. Adams said that the Petitioner should speak with Mr. Grant about Building Code requirements for the door.

The Board discussed adding a condition that there be no interior stairs that could morph it into habitable space. Mr. Hally said that the space would not have enough height to comply with the ceiling height.

Mr. Seegel moved, Mr. Adams 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, subject to a condition that there shall be no interior stairs in the garage.

Mr. Felice submitted a letter of support for the project that was signed by six neighbors.

ZBA 2023-25, MARTHA O'CONNOR, 39 FAIRBANKS AVENUE

Present at the public hearing were Mark and Martha O'Connor, the Petitioner, and Michael Hally, Architect.

Mr. O'Connor said that they have lived in Wellesley for 30 years on Emerson Road, which is one block over from Fairbanks Avenue. He said that they had an opportunity to sell their house on Emerson Road last summer. He said that their children did not want them to move away, so they purchased this home and are now living in it.

Mr. Hally said that the property is located in an SRD 15. He said that it is a very large lot with plenty of depth and frontage. He said that the cape style gambrel house has a single story garage on the right side that is in the setback. He said that is the only nonconformity. He said that the plan is to remove it. He said that they will remove the screened porch on the left side. He said that the plan is to raze and rebuild on top of the garage footprint, pushing it in a little further away from the right side lot line, to build a dining/home office with a bedroom on top. He said that they will raze the screened porch on the left side and build a mudroom and three car garage with a primary suite above. He said that the elevation will stay as gambrel, cape style. He said that they will keep the roofline low. He said that the garage will be side loading. He said that they will build a new driveway on the left side of the lot, inside the setback. He said that there are no tree issues and no retaining walls planned. Mr. Levy confirmed that the current driveway will be abandoned. Mr. Hally said that it is currently gravel. Mr. Levy said that the DPW only wants one curb cut. Mr. Hally said that

currently there is no curb there. Mr. Seegel said that the Petitioner will have to go to DPW for a new curb cut. Mr. Levy said that the Board received a comment from the DPW regarding the bituminous opening.

Mr. Seegel asked about the location of the front walk of the house. Mr. Hally said that it will stay in line where it is now. He said that parking for friends and family will be in the driveway or on the street at the front of house. He said that they will walk across the front of the house and there will be a new section that leads to the new mudroom.

Mr. Levy asked about the height of the existing structure. Mr. Hally said that the overall height of the house will not change. Mr. Levy said that the roofline within the setback will change dramatically. Mr. Hally said that the highest point is the main box of the house at 26.2 feet. He said that the height of the proposed structure that will be where the existing garage is currently located will be 25.3 feet.

Mr. O'Connor said that he spoke with the neighbors.

Danielle Meagher, 45 Fairbanks Avenue, said that she lives on the conforming side of 39 Fairbanks Avenue. She said that it had been an unused porch and very quiet use. She said that when she spoke with Mr. O'Connor, she had not seen the plans. She said that a three car garage is a substantial increase of size and impermeable area. She discussed concerns about the noise from a gravel drive for a three car garage on the side where her bedrooms are. She said that she would like to see a quieter application with some drainage. She said that there are a lot of water runoff issues in the neighborhood. She said that she was very concerned with the increase in area for flood water management. She said that she would like to see studies for mitigation. She said that there are a lot of old trees there and some were taken down. She said that it is a substantial increase on her side of the property. She said that it would be good to have a privacy fence or something so that they are not staring at garage doors. Mr. Levy said that the work on that side of the property is all conforming. Ms. Meagher said that there is a substantial slope. She discussed concerns about containing gravel on the driveway. She said that there has been a lot of rain lately and the gravel has come onto her lot. Mr. Levy said that gravel is good for drainage. Mr. Adams said that permeable pavers do not have the same noise issues. Mr. O'Connor said that they would consider using permeable pavers. Ms. O'Connor said that they thought that the gravel would drain a little better. Mr. Adams suggested that the Board add a condition for grasscrete or equal type of paving, not necessarily pure fully paved brick or paver driveway because that will have more runoff off of it. He said that it should be a more substantial pervious surface for the driveway.

Mr. O'Connor said that the neighbor on other side was ok with the plans.

Mr. Levy read the Planning Board recommendation.

Mr. Adams moved, Mr. Seegel seconded the motion, and the Board voted unanimously to approve a special permit and make a finding that the proposed structure will not be substantially more detrimental than the existing nonconforming structure, subject to a condition that the driveway, in its proposed location, must be of a permeable surface that is not gravel, similar to grasscrete or other type of driveway materials that will allow for significant drainage.

Mr. Levy asked about roof runoff. Mr. Hally said that there is a lot of open green space. Mr. O'Connor said that they can put drywells in. He said that there will be gutters. Mr. Levy discussed having drywells or Cultec systems as a condition so that drainage stays on the property.

ZBA 2023-26, DIANE SCHOENFIELD, 18 CRESCENT STREET

Present at the public hearing were John Chapman, Architect, and Diane Schoenfeld, the Petitioner.

Mr. Chapman said that he was the architect for this property 15 to 18 years ago when it came before the Zoning Board for a special permit to build a one story at the rear. He said that the current proposal is to build a second story matching the same footprint. He said that they will not exacerbate the nonconformity.

Mr. Seegel said that Crescent Street is one of the hidden gems in Wellesley.

Mr. Levy said that the nonconformities are the front yard and side yard setbacks and they will not be exacerbated.

Mr. Adams asked if the Petitioner spoke with the neighbor at 16 Crescent Road. Ms. Schoenfeld said that the people on the other side of the garage are renters.

Mr. Adams asked about the large tree.

Mr. Chapman submitted photographs of the rear of the property.

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

Mr. Levy read the Planning Board recommendation.

Mr. Seegel moved, Mr. Adams seconded the motion, and the Board voted unanimously to approve 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 2023-27, SANDRA & JOSHUA SERIE, 43 FISKE ROAD

Present at the public hearing was Leah McGavern, Architect, representing Josh and Sandra Serie, the Petitioner. She said that the request is for a special permit for an existing nonconforming garage that is within the left side yard setback at the front of the house. She said that the proposal is to move the front of the garage eight feet closer to the street to allow for greater parking and for two bedrooms to replace an existing quirky bedroom on the second floor. She said that she is not aware of any other nonconformities. She said that the property is located on a corner lot. She said that the owners have spoken to all of the neighbors, including the direct abutter on the left hand side, and they all approve of the project.

Mr. Levy said that the Board got a letter from a neighbor. He said that the TLAG Affidavit that was submitted is missing pages. He said that TLAG will be 4,286 square feet in an SRD 15, which is under the threshold for the district.

Mr. Levy said that there were some references to Phase 2 in the plans. Ms. McGavern said that her clients were not sure about the budget when they applied for the special permit. She said that the Phase 2 piece is a study on opposite side of the house. She said that it probably will not be included. She said that it is on the conforming side of the house.

Mr. Levy said that the existing side yard width is 13.7 feet and the proposed width is 12.9 feet. He said that the addition will go further into the setback. Ms. McGavern said that the lot has a slight angle to it.

Mr. Adams questioned the need to build the mudroom in the proposed location. Ms. McGavern said that location would minimize the impact on the interior layout as much as possible. She said that the only other place that it could go would be the kitchen or the dining room. She said that there is not a lot of flexibility on the left side. Mr. Adams asked if it could be located behind the kitchen. Ms. McGavern said that the rear yard is relatively small and narrow. She said that it is a corner lot and the property is quite exposed on the front and right hand side. She said that the area that they use in the backyard is the most private and is

relatively small, so they did not want to infringe on that space. She said that it would be awkward functionally to get to the mudroom at the back of the house and would impact the second the floor. She said that they were trying to keep the integrity of the house. She said that the roofline is tucked in and is subsidiary to the larger roofline, as it's drawn now. She said that it respected the historic nature of the house.

Mr. Adams said that there is a lot of open space elsewhere on the lot and the proposal is to inch closer to the neighbor's property. Ms. McGavern said that it is a corner lot that has two front yard setbacks. She said that the neighbors approved of the project. Mr. Seegel said that the neighbor's garage is closer to the line than the proposed garage addition.

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

Ted Finnerty, 49 Fiske Road, said that his property abuts the garage side of 43 Fiske Road. He said that they were not approached with the plans until after they were submitted. He said that they first heard of the addition through the mailing from the ZBA office. He said that he submitted a memo to the Board.

Mr. Finnerty requested that the property owners at 43 Fiske Road expand where they have space and not move it closer to him. He said that it is a tapered lot. He said that the request is to further encroach another foot or two. He said that there is a shed in between. He said that they will be moving a primary entrance into the house into the side yard where there is supposed to be a 20 foot setback. He questioned why they could not expand the other way and leave this side the same. He said that the current owners purchased the house in October of 2021 and knew what existed for the bedrooms and the way that the house is. He said that the next summer, they cleared out a ton of huge trees. He said that one massive tree that was adjacent to the garage provided the majority of the shade, as did a maple at the front and other trees on the property.

Mr. Levy said that this petition does not trigger the Tree Bylaw. He said that if the trees are not regulated under the bylaw, people have the right to take them down. He said that there is no relief that the Board can give from that.

Mr. Levy said that Mr. Finnerty's driveway and garage is as close to the lot as the driveway and garage at 43 Fiske Road. Mr. Finnerty said that the house at 43 Fiske Road was built in 1934 and his house was built in 1935. He said that he has no space over his garage.

Mr. Seegel confirmed that Mr. Finnerty's side yard setback is also nonconforming. He said that there is nothing that the Board can do about the trees. Mr. Finnerty said that the trees are part of the problem but he is also concerned about adding six feet and a metal roof. He said that they are changing the mudroom entrance that was previously between the garage and the primary house to his side, so the traffic will go in and out on his side. He said that his office is on that side and he will hear traffic all day. He said that it changes the culture of neighborhood and adds a substantially more detrimental piece, which is what he is objecting to.

Ms. McGavern said that the objective was to make the garage more usable. She said that there is a connection inside the garage to the mudroom. She said that the intention was to park the car in the garage and then enter the house. She said that she was not sure if there will be a lot of traffic in and out of the side door. She said that her clients still use the front door quite often.

Mr. Levy asked if screening would help. Mr. Finnerty said that there are existing arbor vitae up to about the shed location. He said that he planted a tulip tree last fall after the trees were cut down. He said that some sort of screening can help.

Mr. Levy asked if the plan is to keep the shed. Ms. McGavern said that she has not spoken to her client about removing the shed. She said that she thinks that her clients would be amenable to plantings.

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

Mr. Levy read the Planning Board recommendation.

Mr. Adams asked about the depth of the roof over the mudroom entrance. Ms. McGavern said that it will be two feet.

Mr. Adams said that a more creative design could have gotten a mudroom without having to extend the nonconformity. Ms. McGavern said that one of the primary objectives was the bedrooms above.

Mr. Seegel asked about the purpose of the metal roof. He said that the existing roof is slate. Ms. McGavern said that her clients would consider trying to keep the slate. She said that slate can break when you remove it, it can be hard to match and is also very expensive. Mr. Seegel said that a metal roof is much noisier than a slate roof. Ms. McGavern said that the general thinking was that it is an attractive material. She said that it is nice to mix up the materials. She said that there is a lot of roof on this house because it is a very steep pitched roof and you see a lot of it. Mr. Seegel said that Plan A.5 says that the shingles will be retained for reuse. He said that he is not a fan of metal roofs because they are noisy and these houses are not that far apart. Ms. McGavern said that they will be re-using some of the slate on the steeper pitched part of the roof, the part that is not a dormer.

Mr. Adams asked about issues with water containment. He said that they will not be increasing the impervious surface.

Mr. Levy said that the consensus of the Board is to continue the petition and perhaps give some opportunity for discussions with the neighbor to provide some mitigation to address some of his concerns and look at the issues concerning the roof, the side entrance and screening.

Mr. Adams said that the door to the mudroom could be on the backside. He said that the plan is for a lot of stuff in that corner of the property.

The Board discussed continuing the petition to June 1, 2023 to be heard de novo.

Mr. Adams moved, Mr. Seegel seconded the motion, and the Board voted unanimously to continue the petition to June 1, 2023, to give the Petitioner time to review the options for improving the conditions from what they are now.

ZBA 2023-28, ROBERT & LAUREN HOLLOWELL, 7 ALLEN ROAD

Present at the public hearing were Richard Curl, Architect, Mike Lynch, Builder and Robert Hollowell, the Petitioner.

Mr. Curl said that the request is for a special permit for a pre-existing nonconforming porch in the front setback that they wish to enclose. He said that existing open front, covered porch encroaches a little under three feet in the setback. Mr. Levy said that they will be enclosing it, so it will no longer be a porch.

Mr. Levy said that the porch is inset. Mr. Curl said that the brick wall of the garage is to the left of the porch.

Mr. Curl said that the plan is to fill in the full width of the porch structure.

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

Mr. Levy read the Planning Board recommendation.

Mr. Seegel moved, Mr. Adams 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 2023-29, STEPHEN & JAROSLAVA O'NEIL, 36 FOREST STREET

Present at the public hearing were David Himmelberger, Esq., Charles Kraus, Architect, Stephen and Jaroslava O'Neil, the Petitioner.

Mr. Himmelberger said that the request is for a special permit to raze a nonconforming detached garage and rebuild a new two car garage with an Accessory Dwelling Unit (ADU) on the second floor with less than 20 feet of side yard setback, at 5.7 feet. He said that the home is a pre-existing nonconforming house due to lot coverage in excess of 20 percent, with an existing lot coverage of 20.4 percent. He said that existing left side yard setback for the garage is 12.2 feet. He said that the house is on a conforming lot of 15,770 square feet in a SR 10 District. He said that the proposed addition will increase TLAG by 1,078 square feet and the roof height of the garage will be 20.4 feet. He said that the entire rear and a portion of the side of the lot is fully screened with mature 20 to 30 feet tall arbor vitae. He said that they provided photographs that show how dense and tall the screening is. He said that his clients have spoken with the neighbors. He said that the neighbor immediately to the left at 32 Forest Street, submitted an email to the ZBA office. He said that neighbors across the street are present at the hearing in support of the request.

Mr. Himmelberger said that the proposed ADU will be conforming at 900 square feet. He said that an ADU requires a special permit when it is located in a detached garage, in accordance with Section 5.13 of the Zoning Bylaw. He read an excerpt from Section 5.13 of the Zoning Bylaw.

Mr. Adams asked if two exits will be required. Mr. Kraus said that it will require an emergency egress from the second floor, no different than an apartment. Mr. Adams said that it is a detached dwelling on a garage, so it is a mixed used building for storage and an apartment. He said that the Massachusetts Building Code requires two exits out of every dwelling unit. Mr. Kraus said that he will discuss the issue with the Building Inspector. Mr. Levy said that the Board will not be granting any relief from that. He said that any change will have to come back before the Board for modification.

Mr. Levy said that the DPW commented that the H part of the driveway might be too close to the existing crosswalk on Forest Street and suggested that the driveway opening be moved away from the crosswalk.

Mr. Adams said that it appears that part of the driveway goes across someone else's property. Mr. Himmelberger said that there is an easement across the driveway.

Mr. Levy said that the Board is not making findings on the ADU. He said that the Petitioner is requesting a special permit/finding to alter a nonconformity and increase lot coverage. Mr. Kraus said that lot coverage will increase from 20.4 percent to 23.6 percent. Mr. Adams said that the Board has to make a finding that the proposed addition will not be substantially more detrimental to the neighborhood. He said that the garage will be demolished and reconstructed. Mr. Himmelberger said that lot coverage is currently in excess of 20 percent and will be exacerbated slightly.

Mr. Kraus said that the existing garage is a two car garage, 18 feet wide with two doors.

Mr. Levy said that even under the Brookline case, this will be a significant encroachment into the side yard, from 12.2 feet to 5.7 feet, which is over 50 percent. Mr. Himmelberger said that offsetting that is the fact

that there is 30 foot tall screening and that neighbor is supportive. Mr. Levy confirmed that the Petitioner would not object to maintaining the screening as a condition of the permit.

Mr. Adams discussed concerns about setting a precedent for allowing larger garages closer to the property line. Mr. Himmelberger said that having 30 foot screening and neighbors in support is a different scenario than if there is not. He said that this is against the rear yard at 32 Forest Street.

Mr. Levy said that the two nonconformities of setback and lot coverage will be exacerbated.

Mr. Adams discussed moving the garage over to maintain the existing setback. He said that the proposed garage will be 36 feet deep to accommodate the apartment upstairs. Mr. Himmelberger said that they cannot move it because of proximity to the house. Mr. Adams said that because of the ADU, the garage is bigger than it would have to be otherwise. He discussed moving the foyer to the interior side of the property. He said that they could move the front of the garage further back. He said that the existing garage is only 18 feet wide. He questioned whether two cars can fit in it.

Ms. Jaroslava said that they have lived there for almost 18 years. She said that the existing garage is extremely short and looks odd. She said that they are proposing that the garage be the same height and size as their neighbor's garage. Mr. Levy said that this garage is in the setback. He said that they also want a larger garage to accommodate an ADU. Mr. Seegel said that the setback does not affect the neighbor at all.

Mr. Kraus discussed the entry upstairs. He said that the reason that it is compressed on the second floor is to get the dormers to look like the existing house and to keep the rooflines low. He said that they could do a two story box and get a lot more space. He said that they tried to keep the space smaller upstairs.

Mr. Adams said that from the south elevation, it looks like one huge house. He said that it does not read as two separate structures. Mr. Himmelberger said that, because of the screening on the side and the house being located where it is, it is a very narrow window through to see it. He said that it is set back approximately 127 feet from the street.

Mr. Seegel said that the Planning Board took into consideration the location and the screening and thought that it would not be substantially more detrimental to the neighborhood. Mr. Levy said that the Planning Board stated that the ADU is in keeping with the spirit of the bylaw and is representative of the projects that the Board wishes to see.

Mr. Adams said that the need for a second stair should be reviewed with Mr. Grant. Mr. Levy said that any modifications to the plan would have to come back before the Board. The Board discussed continuing the petition versus approval of the permit. Mr. Kraus confirmed that the Board would not regulate an interior stair.

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

Rise Shepsle, 35 Forest Street, said that she is Chair of the Wellesley Historical Commission but was speaking today in the capacity as a resident. She said that she has lived in her house for over 30 years and have observed what is a very striking main residence. She said that the garage is not as impressive as the house. She said that, considering the changes that are requested, it will be much more appropriate in terms of how the garage relates to the main house. She said that it will serve an important purpose for the O'Neils. She said that they are an amazingly important couple to the neighborhood and the Town of Wellesley. She said that she would like to do whatever she can to help the O'Neils maintain their residence and to stay where they are.

Mr. Seegel moved, Mr. Adams seconded the motion, and the Board voted unanimously to approve a special permit and make a finding that the proposed will not be substantially more detrimental to the neighborhood than the existing nonconforming structure, subject to conditions to maintenance of the current trees and screening, subject to diseased or hazardous conditions.

Ms. Jaroslava said that they have a number of mature trees on the side of the property that they intend to maintain. She said that there is one that they have had to cable because it was unstable. She said that she planted 53 trees on the property and will do anything to save the tree. She said that she was not sure it can be saved, even without construction. She said that it is the tree that is closest to the garage.

Ms. O'Neil said that they will maintain the fence.

Mr. Himmelberger submitted photographs of the rear of the property.

Mr. Levy said his concern is the corner where the garage is and screening. He said that a condition could be for maintenance of current trees and screening, subject to diseased or hazardous conditions.

Mr. Adams said that the project is subject to approval of the Building Inspector.

Mr. Himmelberger thanked Mr. Seegel for his service.

ZBA 2023-30, SRI SANKAR 1 ALBA ROAD

Present at the public hearing were Harini Narayanan and Sri Sankar, the Petitioner.

Ms. Narayanan said that the request is to build a porch at the front of the house.

Mr. Seegel said that the lot is flat and does not have any sharp angles. He said that a variance is not possible for this lot. He said that what would solve the problem would be to bring the porch back so that the frontage ends up being 30 feet from Alba Road.

Mr. Levy said that the request was for a variance. He said that the Board heard other requests at this public hearing for special permits. He said that a variance is a different standard from a special permit. He said that the statute is very restrictive. He said that there has to be a hardship that relates to the shape of the lot, the topography of the lot, or the soil conditions. He said that this is a flat, almost square lot.

Mr. Levy said that this is a corner lot, so there are two 30 foot front yard setbacks. He said that the proposed porch is shown on the plot plan as being 29.3 feet from Alba Road. He said that if the porch is pulled back to 30 feet it will be conforming and can be permitted without relief from the Zoning Board.

Mr. Seegel said that it would be more appropriate to allow the petition to be withdrawn without prejudice so that they can come back at a future time. He said that the petitioner should have their engineer try to see if he can design a porch that maintains the 30 foot setback from Alba Road.

Mr. Adams asked about the size of the porch. Mr. Sankar said that it was designed to be 6 feet. He said that they can cut a foot off. Mr. Adams said that the setback on the left side of the proposed porch appears to be more nonconforming than the right side of the proposed porch. He said that the whole porch needs a 30 foot front yard setback.

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

As there was no further business to come before the Board, the hearing was adjourned at 9:57 pm.

Respectfully submitted,

Lenore R. Mahoney
Executive Secretary

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