

**ZONING BOARD OF APPEALS**

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WALTER B. ADAMS  
DEREK B. REDGATE  
PETER COVO

July 6, 2023

Remote

7:30 pm

Zoning Board of Appeals Members Present:

J. Randolph Becker

Walter B. Adams

Peter Covo

**BUSINESS MEETING****ZBA 2022-33, THOMAS CLIFFORD & BRIANNA WILSON-BYRNE, 14 PINE PLAIN ROAD**

Mr. Becker said that the request before the Board is for a determination that changes to an existing permit are a minor modification that does not require a public hearing

Present as the public hearing was David Himmelberger, Esq., representing Thomas Clifford and Brianna Wilson-Byrne. He said that the Board approved a special permit in 2022 to raze a one story extension and deck and build a larger deck and two story addition on a nonconforming house and lot. He said that since that time, his clients considered modification of the mudroom and addition of a bedroom on the second floor over an existing structure. He said that both modifications will be fully conforming and will add 219 square feet, for a total TLAG of 3,221 square feet, which is below the threshold for an SR10 district. He said that because the changes will be fully conforming, his clients thought no additional relief was needed. He said that because the modifications will be done in conjunction with a previously issued special permit, the Building Inspector said that it should not be a stand-alone matter but a minor modification. He said that he submitted a letter of support from the left side neighbor, who is closest to the nonconforming side setback. He said that the request is for a determination by the Board that the modification is minor and if it is determined to be minor, whether the Board is willing to grant the modification.

Mr. Adams said that the plot plan does not identify where the extra foot is being added. He said that the plot plan is dated February 11, 2022. He said it was not clear that the plot plan represents the proposed change to the mudroom. Mr. Himmelberger said that the request is to extend the depth of the mudroom shown on the plot plan as 9.94 feet to 11 feet, as shown on Plan A1.1. Mr. Adams confirmed that it is not within the setbacks.

Mr. Adams asked about the proposed second story addition. Mr. Himmelberger said that the proposed second story bedroom is shown on Plans A2.2 and A3.2. He said that Plan A2.1 shows what was previously

approved. He said that the plan is to extend upward for a second story that will be fully compliant. Mr. Adams said that there will be a change in the windows. He said that the sunroom will lose some natural light.

Mr. Becker said that when you look at the drawings, some of the changes have impacts that cover quite a distance. He said that the question is whether it is a minor modification.

Mr. Himmelberger said that Plan A2.1 on the revised plans shows that none of the changes can be seen from the street and the peak of the existing roofline will remain as is. Mr. Adams said that Plan A2.2 shows that the roof will be increased. Mr. Himmelberger said that it will be no taller.

Mr. Becker said that, since the changes are outside of the variables that were important to the Board in its original application, he could be convinced that this could be a minor modification.

Mr. Adams asked if the Applicants reviewed the changes with the neighbors on either side. Mr. Himmelberger said that the neighbor on the left side sent a letter. Mr. Clifford said that they reviewed the plans with both sides. He said that they got a letter from one neighbor and a text confirmation from the other, both expressing support.

Mr. Adams moved, Mr. Covo seconded the motion, and the Board voted unanimously to make a determination that the proposed changes are a minor modification that does not require a public hearing, and approve the proposed modifications, subject to submittal of a revised plot plan of a size that is readily readable.

Mr. Adams voted aye.

Mr. Covo voted aye.

Mr. Becker voted aye.

Mr. Himmelberger confirmed that the revised plot plan should show the existing footprint and the one foot addition. Mr. Adams said that the plan should note that it is tied to the determination of a minor modification and the change.

#### PUBLIC HEARING

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

Present at the public hearing were David Himmelberger, Esq. and Gary Aharonian, the Petitioner. He said that this matter was on the agenda two meetings ago seeking a special permit to allow for sales of motor vehicles, which are allowed in the Business District with a special permit. He said that the Board raised questions about the proposed parking layout and traffic related to such a use. He said that the petition was continued, pending submittal of a traffic study and parking layout plan. He said that the traffic study concludes that the addition of two parking spaces for cars for sale will not have any significant impact on traffic. He said that the parking plan is in compliance with the off-street parking bylaw that requires one space per 150 square feet of building footprint. He said that the building is 1,800 square feet, so 12 spaces are required. He said that the plan shows 14 spaces. He said that the additional two spaces are proposed for cars for sale. He said that the granting of a special permit to allow the station to sell used vehicles will allow the owner to gain access to the wholesale market. He said that they otherwise meet the criteria for granting a special permit.

Mr. Adams said that he lives nearby and did not recall seeing any cars parked on the left side of the property. He asked if there will be a limit on the number of cars for that will be for sale. Mr. Himmelberger said that the plan show two spaces in which car sales could be offered. He said that it is rare to see cars in all of the

spaces. He said that he does frequent the gas station and has not typically seen cars parked on the fan. He said that there is adequate parking, pursuant to the off-street parking bylaw, as shown on the parking plan.

Mr. Adams asked if there is a limit on the number of cars that they can offer for sale. Mr. Himmelberger said that he did not believe so. Mr. Adams discussed concerns about a number of cars with big placards on them. He asked about advertising to augment the sales of vehicles.

Mr. Aharonian said that he is the owner of Patriot Petroleum. Mr. Adams asked if Mr. Aharonian has been selling cars at 199 Worcester Street. Mr. Aharonian said that he has not been selling cars at this location. Mr. Adams confirmed that there will be no banners or flags that could distract drivers making the turn off of Route 9. Mr. Aharonian said that they will use stickers on the windshield. He said that he plans to offer two cars for sale at a time.

Mr. Becker said that from the first submittal to the second submittal, the number of cars for sale changed from five to two. Mr. Aharonian said that after the first hearing, his engineer determined that they can only have two cars for sale.

Mr. Becker said that the request is for a special use permit and that does not have a number in it, just a use. He said that they will fill up the 14 spaces that are required by the bylaw for off-street parking. He said that they came to two spaces for cars for sale by subtracting from the 14, meaning that they have other uses for the other 12 spaces. He said that is different from a permit to sell two cars.

Mr. Adams confirmed that vehicles are serviced at the station. He said that some of the spaces will be taken up by vehicles waiting for service.

Mr. Becker said that the Planning Board recommendation appears to have been written before the engineer's report was submitted. He said that the report answered all of their questions.

Mr. Covo asked which two spots will be used for car sales. He asked if they will be moving the spots around. Mr. Himmelberger described the location of the proposed spaces for car sales.

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

Mr. Adams moved, Mr. Covo seconded the motion, and the Board voted unanimously to approve a special permit that will allow for 14 parking spaces that will encompass the uses of service, the retail business and the sale of cars.

Mr. Adams voted aye.

Mr. Covo voted aye.

Mr. Becker voted aye.

#### ZBA 2023-36, WEN JIA, 8 MARTIN ROAD

Present at the public hearing were Wen Jia, the Petitioner, and Haosheng Zhang, Architect.

Ms. Jia said that the existing house is approximately 1,500 square feet, with three bedrooms, one full bath and one half bath. She said that they really need extra space. She said that there are five people living in the home, including two kids and her mother in law. She said that they would like to add a bedroom and convert a half bath to a full bath. She said that they would like to push six feet into the back yard to convert the half bath on the first floor to a full bath. She said that the bedroom on the second floor will be a little bigger. She said that the sunroom is currently a small walk in closet on the side of the house that will be a fourth

bedroom on the second floor. She said that the proposed house will be approximately 1,900 to 2,000 square feet.

Mr. Becker said that the nonconformities are right and left side yard setbacks. He said that the proposed additions are either within the existing nonconformities or behind the house and not affected by the nonconformities.

Mr. Adams confirmed that the addition to the rear will be two stories. He said that it will be 18.6 feet from the property line. He asked if the Petitioner considered setting the addition in on that side another 1.4 feet to 2 feet to be compliant. He said that it does not look like the space would suffer. He said that when granting relief, the Board likes to limit the relief to what is necessary and could not be done otherwise. He said that for approximately 12 square feet of space, the Petitioner could make the rear extension compliant. Mr. Zhang said that they can look at the suggested changes. He said that there are some Building Code issues with respect to clearance above the toilets and vanity. He said that he was trying to maintain a useful bathroom and try to use every inch of space that they can. He said that they can look at reducing the addition on that side. Mr. Adams said that would make a big difference.

Mr. Adams discussed a discrepancy between the plot plan and the floor plans. He said that the addition on the east side extends beyond the corner of the existing house on the plot plan but does not appear to do that on the floor plans.

Mr. Adams said that the plans show that they will continue the roofline higher than the existing ridge. He asked about maintaining the original ridge and gutter line to reduce the height of the addition on that side. He said that it will be more impactful to the abutter who is fairly near, within 10 feet on the second floor on the street end and 13 plus feet on the other end. He asked if the plan was to avoid any angled ceilings in the existing building. Mr. Zhang said that on the front elevation, the chimney will still be there. He said that the addition is a future master bedroom. Mr. Adams said that it is an awkward design that is slightly mitigated by the chimney. He said that the existing house has a consistent ridgeline and the proposed house will have a same slope roof that is up two feet. Mr. Zhang said that a consistent roof line would look better but they were dealing with the internal function of the space to make it a master bedroom.

Mr. Becker said that the issue is really on the far side and if that could be moved over to be conforming. He said that because the second story will be built on top of the first floor, the nonconformities are ones that are already there. Mr. Adams said that they will be extending the nonconformity vertically.

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

Mr. Becker read the Planning Board recommendation.

Mr. Adams moved, Mr. Covo 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 the addition on the west side be set back further from the property line so as not to extend the existing nonconformity, and that a revised plot plan be submitted.

Mr. Covo voted aye.

Mr. Adams voted aye.

Mr. Becker voted aye.

ZBA 2023-37, 165-177 WORCESTER ST. ASSOC., 173 WORCESTER STREET

Present at the public hearing was Erik Janiel, Design Communications, sign contractors. He said that they are currently in the process of replacing all of the signage for Newton Wellesley and Mass General throughout the State for rebranding. He said that at this site they are looking for relief to have a new logo that exceeds the allowable height within the bylaws. He said that the proposed logo will be an inch smaller than the existing logo.

Mr. Adams said that the existing sign appears to be halo lit. He asked about proposed lighting. Mr. Janiel said that the sign will not be illuminated. He said that it will be standard stud mounted letters.

Mr. Janiel said that a window sign is shown on Plan E-01. He said that the existing window sign is on the left panel and is approximately 11 inches tall by 32 inches wide. He said that the new logo and sign on the door will be 3.5 inches tall by 25 inches wide. He said that there will be nothing on the windows.

Mr. Becker read the Planning Board recommendation.

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

Mr. Adams moved, Mr. Covo seconded the motion, and the Board voted unanimously to approve a special permit for a wall and a window sign and make findings pursuant to the provisions of Section 5.18 of the Zoning Bylaw.

Mr. Covo voted aye.

Mr. Adams voted aye.

Mr. Becker voted aye.

ZBA 2023-38, FRANCISCO TRIANA, 96 WOODSIDE AVENUE

Present at the public hearing were Amber Galko, Architect, and Francisco Triana, the Petitioner.

Ms. Galko said that the request is for a special permit for renovation of an existing single family home. She said that requested relief is for lot area and side yard setback. She said that the renovation will include the existing basement and first floor living and kitchen spaces and adding a new second floor with bedrooms and bathrooms. She said that the footprint of the foundation will not change, so the existing nonconformities will not be increased. She said that the lot is challenging because it is small with a severe slope. She said that the street side is the low point. She said that the lot is nonconforming at 5,024 square feet, and the existing right side yard setback is 9.5 feet. She said that the last time the petition came before the Board, there concerns about the proposed height. She said that the proposed design removed 450 square feet of attic space, which brought the ridge down from 35 feet to 28 feet above average grade. She said that the changes are in line with the requests of the Board and the proposed design will fit in with the neighborhood.

Mr. Adams said that it is a nice design. He asked if the basement is considered to be a basement under the definitions in the Building Code. He questioned whether this will be a three story structure or a two story with a tall basement. He said that it is a small lot and it is reasonable for owners of small lots, as long as they are not moving out from the confines of the building structure, to build up.

Mr. Adams discussed inconsistencies in the drawings. He said that there are some windows in the plans that do not show in the elevations. He said that on Plan A4, the front elevation shows a door to the storage room. Ms. Galko said that there is an existing door there that will be removed. Mr. Adams said that the drawings will have to be corrected. He said that the double windows at the basement level to the right of the door do not show up on the floor plan of the basement. He said that on Plan A5, the windows locations on the side elevation on the basement and first floor levels are not shown in the location on the floor plan.

Mr. Adams said that he did not have any problem with the height of the building. He asked about any existing condensers or heat pumps. Ms. Galko said that there is no outdoor existing unit. She said that the original proposal was to have a unit at the back corner but there were concerns about proximity to the neighbors. She said that they now show two proposed locations. She asked about moving the unit to the right side of the building. She asked if it would be a problem if you could see it from the street.

Mr. Becker said that on the plot plan, on the northwest corner it shows an HP. He said that he could not tell if it would meet the 10 foot setback at the rear but it does not meet the 20 foot right side yard setback and would need a variance for that location.

Mr. Adams asked about moving the unit to where the plans shows a deck on the rear left. Ms. Galko said that they can move it there if that is the preferred location. She said that it will be a mini split type of heat pump and they heard at the previous hearing that they were allowed in the setback. Mr. Becker discussed locating the unit in a by right location versus asking for a variance due to the slope of the lot. Ms. Galko said that they would prefer to have no variance. She said that they will submit a revised plot plan.

Mr. Becker read the Planning Board recommendation. He said that the proposed height of the structure is allowed by right under the Zoning Bylaw.

Mr. Adams said that a revised plot plan and corrected plans should be submitted. He said that the plans will have to show a compliant location for the ac unit.

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

Ria Stolle and Langdon Andrews, said that they are direct abutters to 96 Woodside Avenue, due north. Ms. Stolle said that one of their biggest concerns about the whole project is the height. She said that it's good that they brought the height down but the first floor will still be 9.5 feet and the second floor will be 13 feet with skylights. She said that it is a better plan but the structure will block their sun and they will be in shadows because it will be only 9.5 feet off the property line. She said that it will be a significant impact to them.

Mr. Adams asked if Ms. Stolle's house is taller and higher up the hill. Ms. Stolle said that the proposed structure will tower over their house. She said that from her second floor, she looks at the top of the existing house. She said that when they go up, she will be looking at a wall and that will have a big impact on them.

Ms. Stolle asked about the Planning Board's concern about stormwater runoff. Mr. Adams said that he did not have any concerns about that because the slopes seem to take care of it and they are not adding much impervious surface. He said that there will be permeable pavers for the parking spaces and the driveway is existing.

Ms. Stolle said that there is a manhole cover right off of the house. She said that her biggest concern is the height. She said that her house and gardens will be in shadow and their second floor windows will look out at the wall of the house.

Mr. Andrews said that a concern is about proportion. He said that it will be a towering structure that is not proportional to the size of the space. He said that it will be very tall in a small space.

Ms. Stolle said that the slope changes the dynamic. She said that it is a walk out basement. Mr. Becker said that the height is allowed by right under the bylaw. Ms. Stolle said that the standard is whether it is more detrimental to the neighborhood. Mr. Becker said that is the standard for a special permit and they do not need a special permit for the height.



The Board discussed conditions for revised floor plans that are coordinated with the elevations for windows and doors, and the location of condensers or heat pumps in compliant locations. Mr. Covo asked if the manhole needs to be shown on the plan. Ms. Galko said that they do not plan to change anything at the street. She said that they can discuss the manhole cover with the Building Inspector if there is an issue.

Mr. Adams moved, Mr. Covo 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 heat pumps or condensers locations be provided outside of the side and rear yard setbacks and that the elevation drawings be revised to coordinate window locations and door locations with floor plans.

Mr. Adams voted aye.

Mr. Covo voted aye.

Mr. Becker voted aye.

#### ZBA 2023-39, BIKE REALTY LLC, 951 WORCESTER STREET

At the request of the Applicant, Mr. Covo moved, Mr. Adams seconded the motion, and the Board voted unanimously to continue the petition to August 3, 2023.

Mr. Adams voted aye.

Mr. Covo voted aye.

Mr. Becker voted aye.

#### ZBA 2018-18, DAVID COLETTA, 39 ATWOOD STREET

Present at the public hearing was David Coletta, the Petitioner, who said that he has a nonconforming garage. He said that the request is to add a two foot cantilever at the back of the second floor and a box bay window at the front for more light for an office upstairs. He said that the garage is very close to the angled boundary.

Mr. Becker said that he did not see anything in the documents that were submitted that helped him to understand how close the garage is to the property line. He said that the garage starts out at 1.3 feet and the addition projects 2 feet at some angle. Mr. Coletta said that it will be approximately 4 inches closer to the angled boundary. He said that it will be approximately 1 foot away.

Mr. Adams said that Mr. Coletta previously requested and was granted relief. He said that it appears on the photographs that the foundation was put in but the garage has not been built. He said that both additions don't fit architecturally with the structure and give it a top heavy look. He questioned if the additional space will be enough for an office area. Mr. Coletta said that two feet will give him room for a desk area. He said that the rest of the space is open attic.

Mr. Adams said that the drawings are hard to read because the print is small and light.

Mr. Adams said that the proposed design changes do not enhance the initial request. He said that it could be that only the neighbor on back side will see the addition at the back. He said that the plot plan that was submitted does not show the proposed extensions on the second floor. He said that it is a long narrow lot. He said that it does not seem to be an issue that the changes will be seen from the street. He asked if there will be a driveway on the right side of the property to the back from Atwood Street. He said that it is not shown on the plan.

Mr. Adams discussed concerns about the proximity to the neighbor. He said that the neighbor does have a garage there as well. He questioned why this wasn't moved further into the lot. Mr. Coletta said that the

garage would not be useable for a car unless it was pushed back several feet to the back. He said that he prefers to have the garage on the side, not in the back yard. Mr. Adams said that the Board typically tries to improve, rather than maintain or make worse nonconforming conditions. He said that he was not sure that he could approve extension of the second floor.

Mr. Covo said that he had trouble following the plans because they are so small. He confirmed that the proposed extensions are at the front and the back on the second floor.

Mr. Coletta said that he submitted a summary that shows what the garage will look like. He said that there is a box bay window over the garage door that was put there for architectural style and is not important. He said that the addition at the back is the one that he wanted for additional space for a desk.

Mr. Adams asked about the depth of the addition over the garage door. Mr. Coletta said that it will be up to 1 foot in the front and 2 feet at the back. Mr. Adams said that the addition at the back will encroach closer to the property line

Mr. Becker said that he was not as concerned about the back side.

Mr. Adams said that he would want the addition at the back set in so that it did not further encroach into the setback. He said that if the addition runs the full width of the back of the garage, it will probably be right on the property line or within an inch or two. Mr. Coletta said that the existing setback is 1.3 feet. He said that going back the full width will bring it a little more than 1 foot at the back corner. Mr. Adams said that it will be too close to a property line. Mr. Coletta said that it will be 3 inches closer.

Mr. Coletta said that the plan that was submitted is the As-Built Plot Plan with the new foundation.

Mr. Adams discussed cutting 6 inches off the corner of the bay.

Mr. Covo discussed concerns with getting closer to the property line where it is already really close, even if it is just a few inches.

Mr. Becker discussed the options for moving forward with the petition.

Mr. Coletta asked for clarification of the Board's concerns. Mr. Becker said that there is little sentiment for taking something that is egregiously close to the boundary and making it closer. He said that this may not be the place to put an office.

Mr. Adams said that he did not like the overhang on the second floor, especially the full width one. He said that it is awkward on the building but he would not deny it based on that.

Mr. Coletta asked about coming back with a revised plan. He said that he submitted a picture of his neighbor's garage. Mr. Becker said that it is not a question of how the garage will look. He said that one of the options could have been to rotate the garage so that the most southerly side of the garage was parallel to the lot line. He said that the foundation is already in. He said that by doing the project one bite at a time, you lose sight of the overall. He said that is the problem with the proximity of the property line. He said that the Applicant can do all sorts of things to make it work, but that is not why the town has setbacks.

Mr. Adams said that the Board will need to see a change to the plot plan and to the drawings.

Mr. Adams moved, Mr. Covo seconded the motion, and the Board voted unanimously to continue the petition to August 3, 2023.



Mr. Covo voted aye.  
Mr. Adams voted aye.  
Mr. Becker voted aye.

ZBA 2008-43, JILL MURPHY, 48 PARKER ROAD

Present at the public hearing were Jill and Lane Murphy, the Petitioner. Ms. Murphy said that the request is for modification of a special permit for cutting several trees down in her back yard in 2021. She said that they made the decision to remove three trees on the east side for safety of their children and because their neighbor at 26 Bryn Mawr Road ask them to remove a dying ash tree with a split trunk from the southeast corner of the back yard because he was concerned that the overhanging limbs might drop on his house. She said that they agreed to do it because it was obvious that the tree was a hazard. She said that, by coincidence, Cricket Vlass, Wellesley Park & Tree Superintendent, was inspecting Perrin Park and said that the tree, among others, looked to be a hazard on their property. She said that they also removed two mature large pine trees on the east side due to the proximity to their house and their two boys' bedrooms. She said that they have lived there for 12 years and during this time have had two large trees crash into their yard, one from Perrin Park and one from Parker Road. She said that during every wind storm, heavy branches would fall. She said that they called Stumpy's, who inspected the trees and told them that the trees were sick. She said that they were told that they did not need a permit to remove the trees. She said that they had no idea that the tree removal violated anything until they received the letter from the Building Inspector.

Mr. Adams asked if the Murphys were involved in the original permit for the house. Ms. Murphy said that they were not. She said that they bought the spec house and were not alerted about a special permit with conditions. She said that it is confusing because the person who owned by the house had same last name but is not related. She said that they did not look for a special permit at the Registry of Deeds.

Mr. Adams said that there are other issues involved with work that was done that needed building permits that were never obtained. Ms. Murphy said that they have gotten the building permits. She said that the company that they used told them that they got permits, which they have in writing. She said that they have the permits now.

Mr. Adams asked if there are any issues with lighting. He asked if the Murphys have come to any agreements with the neighbors about when the lights and sound will be turned off at night. Ms. Murphy said that they tried to speak with neighbor. She said that they tilted the light twice. She said that she's been getting harassing texts. She said that her boys play outside. She said that they turn the light off at 10 pm. She said that over five years there have been a handful of times when the lights have stayed on longer. She said that the neighbor complain about the music, so they have not turned the music on in over a year. She said that she prefers to have her kids play outside after they do their homework instead of being on their phones and watching TV. She said that she asked the neighbor to talk but the neighbor prefers to text. She said that they have communicated with the police as a mediator.

Mr. Adams said that any basis to approve modification of the original permit would have to include re-creation of the some of the screening that was referenced in the special permit.

Mr. Becker said that this is a bigger problem than cutting down trees. He said that it was not clear to him that the aggregate of the pitching machine, batting, basketball court, lights and sound system did not go through the review process. He said that it is not clear that those types of facilities are allowed in a residential district. He said that the problem seems to be more than simply cutting down trees.

Ms. Murphy said that the trees that were cut down were not near the sport court. Mr. Becker said that the condition was for all of the trees on the property except for the one that was sick. He said that any trees that were cut after 2009 and any projects that were done after 2009 should have correlated with the decision. He

said that the Board has dealt with cases where work was done without a permit. He said that those cases were simpler in that the Board concluded that had that person come to the Board with the equivalent of the Murphy's trees being cut down timely, the Board probably would have granted a permit. He said that when the play area was constructed, some things that should have happened did not. He said that comparing the Town's Assessor's database from 2021 and 2022, it is very stark how many trees disappeared during that timeframe. He said that he has not seen anything tells him how and when anything was built during that time that at related to the trees that were taken down.

Mr. Covo said that there does seem to be a lot of questions about construction going on in the back yard. He said that he read that the trees were diseased but did not see anything that supports that in the documents that were submitted.

Mr. Adams said that the current homeowners were not involved when the special permit was granted. He said that they only became aware of the special permit recently. He said that the decision and the five conditions went through the process at the time and are all that this Board has to work with. He said that the decision with its conditions is what allowed the previous owner to build the house. He read the conditions for ZBA 2008-43. He said that the Board will have to look at the records that are available to try to understand the intent of the approval and what the then owners of the building were obligated to do to comply with the conditions and not leave issues for future owners. He said that the Board has dealt with cases where neighbors do not communicate for various reasons. He said that for this case, the Board has to figure out a way that the intent of the original decision can be exercised at this point.

Mr. Becker said that the records don't reflect enough of the facts to understand the totality of what happened. He said that the Board does not know what the current owners' role is in that. He said that to get to the place it needs to be for this petition, the Board has to consider more than just cutting down the trees. He said that it starts to get into the dispute that Mr. Adams alluded to because things like that should not happen and there bylaws that prevent them from happening. He said that the Board is faced with a case for work that should have arisen from the permit did not arise. He said that the Board has to decide if it is not concerned that what was done was not a problem or do they need to figure out what is wrong and fix it.

Ms. Murphy asked if Mr. Becker was questioning whether they would be allowed to put a sports court in their back yard. Mr. Becker said that he did not find anything in the bylaw for allowed uses in a residential district similar to that use. Mr. Murphy said that there are many sport courts in Wellesley. Mr. Becker said that what is important is what happened in this particular case.

Ms. Murphy said that she was trying to understand what was wrong about building the sport court. She said that they hired a company and paid for all of the permits. She said that when they realized that the company did not get the required permits, the company has been working with the Town to get the proper permits.

Mr. Adams said that it is Mr. Grant's determination whether or not a sports court could be constructed. He said that a sport court was not mentioned in the decision but screening and trees were. He said that a landscaping plan was supposed to have been submitted as part of construction of the building. He said that although the Murphys were not the owners of the building at the time, they inherited the responsibility when they bought the property.

Mr. Murphy said that they have several other friends in town who have similar sport courts.

Mr. Becker discussed moving forward with the petition. He said that the chain starts with the original permit, understanding the second condition and what the Board meant about things that could not be removed, and what the links forward are, through the point where trees were cut down, understanding at what point after construction of the house occurred, relative to the trees and if they are inter-connected or not. He said that will give the Board an understanding of whether the things that happened were planned or

unplanned, if they had come to the Board timely, what would the Board's actions likely have been. He said that there needs to be more investigation that involves more than simply cutting down trees.

Mr. Covo said that the Murphys should be given time to pull information together. He said that they showed up unrepresented because they thought that it was just about the trees and not a bigger issue.

Ms. Murphy asked what the Board would like to see. She said that she thought that the issue was about trees. She said that she had no idea that the sport court had anything to do with the issue.

Mr. Becker said that one way that the Board could look at what was brought to it is to consider it simply a request to cut down some trees. He said that the problem is that it is after the fact. He said that the Board's past actions suggest that it does not think that people should be doing things without the requisite permits. He said that the idea that the Board should just say that it is not a problem to cut down the trees says that the bylaw has no value. He said that the Board has to figure how this went wrong so that it does not happen again. He said that this case is partly the Board's history and the way that things did not turn out the way that the Board wanted them to and the Board got stuck holding the bag, and if the Board has to be stuck holding the bag in this case, the Board wants to understand why.

Ms. Murphy said that her understanding from the letter from Mr. Grant was that there were three things that they needed to do, try to get modification of the special permit, get a permit for the structure, which they did, and lighting, which they did. She said that the issue seems to be more than that now.

Mr. Becker said that it is understandable how a resident of a single family district would not be able to read between the lines of what the Building Department says. He said that Mr. Grant was looking to the Board for guidance as to what the Board thinks the answer should be. He said that the mechanism to do that is the trees and the tree permit.

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

David Himmelberger, Esq., said that he was representing Dr. Deyanira Corzo, 50 Parker Road. He said that he submitted a letter to the Board outlining the concerns that his client has regarding the sport court as a result of the trees coming down. He said that the trees started coming down in 2016 and have come down because they are an impediment to the sport court. He said that if the Applicant had gone to the Building Department to apply for the proper permit for the tennis wall, the Building Department would have looked at the Zoning history, decisions and conditions. He said that he submitted aerial photos that show the transformation of this heavily wooded area to a barren back yard with the sport court. He said that he submitted text messages between Ms. Murphy and his client that reference the taking down of trees in 2019. He said that in looking at the series of photos that were submitted, you can see that the trees come down and the sport court goes up, and that seems to be more than just pure coincidence. He asked that the Board members walk the property line at Perrin Park, which is behind the Murphy's property. He said that there is dense forest along all of the other properties. He said that the Murphys seem to be the only ones who had trees with issues is not credible. He said that if the proper permits had been applied for, the Zoning decision would have been reviewed and there would have been oversight of this project. He said that he looked at the letter that the Applicant submitted and there was nothing about planting more trees. He said that his client has had to bear with the impact of the denuding of the back yard area. He said that the Murphy's property is registered land and the decision is listed on their Certificate of Title in Land Court. He said that it would have come up if they had followed the building permit process. He said that Mr. Grant's letter said that things had to be done within 10 days. He said that application for the tennis wall has not been submitted. He said that a Certificate Workers Comp, a Home Improvement License and an authorization by the Murphys for a permit to be submitted were submitted. He said that those actions only occurred in the last week. He said that his client is concerned about how this was handled. He asked that the Board review the materials that he submitted in more detail before the next hearing.

Mr. Becker said that the forum is not for back and forth between the speakers but to bring out information for the Board.

Mr. Becker discussed continuing the hearing and other options for moving forward with the petition.

Ms. Murphy asked what documents the Board would like to see. Mr. Becker said that the Board would like to see evidence that the trees that were cut down were diseased.

Ms. Murphy said that she did not understand what the case against her is. She asked how she is supposed to have supporting evidence. She said that she understood about cutting the trees but not about building a sport court on her property. She said that she will try to get a statement from the arborist who cut the trees down.

Mr. Adams said that Mr. Grant sent a letter to the Murphys. Ms. Murphy said that they met with Mr. Grant and got the electrical permit and are working on the structural permit. Mr. Becker said that the Board is looking for things behind that. He said that Ms. Murphy talked about Stumpy's and what they did. He said that happened at a point in time for a particular reason. He said that is one of the links in the chain. Ms. Murphy said that Stumpy's did not do anything with the sport court. She said that she had bushes and three small trees cleared out for the sport court in 2019. She said that she did not know that was part of the issue before the Board. She said that Mr. Grant's letter talked about removal of trees between 2021 and 2022. She said that she had no idea that the sport court was the issue that was being talked about at the hearing. She said that the trees that she was talking about were cut down three years after the sport court.

Mr. Becker said that the aerial photos show the change. He said that there is nothing in the documents submitted that talks about how many trees were cut down, when they were cut down, and why. He said that the condition said that all of trees on the property were to be preserved except for one that was sick. He said that those trees are not there anymore. He asked when and why they went. He said that the Board does not have much by way of evidence that supports that and allows the Board to say that is the case or not. He said that the Board has certain claims that people made. He said that the Board has to sort through whether things happened on purpose or by accident and what the Board's reaction to it with respect to the trees that were cut down and whatever consequences fell out of that.

The Board discussed continuing the hearing to August 15, 2023 at 7:30 pm. Ms. Murphy said that she was not sure that her attorney would be available.

Mr. Covo moved, Mr. Adams seconded the motion, and the Board voted unanimously to continue the petition to August 15, 2023 at 7:30 pm.

Mr. Covo voted aye.

Mr. Adams voted aye.

Mr. Becker voted aye.

#### ZBA 2023-40, TIFFANY & COLIN WOODWORTH, 3 SUMMIT ROAD

Present at the public hearing were Tiffany and Colin Woodworth, the Petitioner, and Barry Ganek, Architect. Ms. Woodworth said that the request is for relief for a single story addition that will connect their existing garage to the existing house. She said that the existing garage is located in the side yard setback.

Mr. Ganek said that the proposal is to extend the garage wall that currently sits 6 inches beyond the side setback, and to extend it 3 feet towards the street that will allow use of the garage by the family car. He said that the proposed one story addition will be within the buildable envelope of the site and the area coverage will be under the maximum allowed.

Mr. Covo asked if the space will be heated. Mr. Ganek said that the garage will not be but the extension will be. He said that extension will be a mudroom and the back room is a multipurpose room.

Mr. Becker said that the existing nonconformities are the front yard setback for the house and the side and rear yard setbacks of the garage.

Mr. Ganek said that there will be no work done on the main house.

Mr. Adams asked about moving the garage over closer to the house to reduce some of the nonconformities.

Mr. Covo confirmed that the basement hatch is on the left side of the house. Ms. Woodworth discussed issues with moving the car into the garage. She said that the request is to increase the garage to fit one car and to attach the garage to the house. Mr. Ganek said that they looked at a number of ways to make it work. He said that it was tough to get the proposed structure in the buildable area.

Mr. Becker read the Planning Board recommendation.

Ms. Woodworth said that a neighbor wrote a letter of support.

Mr. Ganek said that the detailing on the renovated garage is similar in style and materials. He said that the ridge will be only inches taller. He said that the sense of the original garage will remain. He said that the filler piece is a weatherproof connection for access to the house.

Mr. Becker said that none of the existing nonconformities will get worse.

Mr. Covo said that he could support the petition. He said that old garages are tight and that having a protected walkway from the garage to the house in the winter is good.

Mr. Adams said that connecting the garage to the house unintentionally makes the house seem bulkier because you do not see the space between the house and the garage.

Mr. Becker said that the 500 Foot Rule is applicable in this case but there is no impact to it.

Mr. Covo 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.

Mr. Covo voted aye.

Mr. Adams voted aye.

Mr. Becker voted aye.

#### ZBA 2023-27, SANDRA & JOSHUA SERIE, 43 FISKE ROAD

Present at the public hearing was Sandra Serie, the Petitioner, who said that a previously proposed eight foot extension was reduced so that the left side yard setback will be 13.6 feet instead of 12.9 feet. She said that by pushing the front back, they expanded slightly at the rear. She said that they removed the side entrance and lowered the roofline slightly. She said that she met with neighbors, who responded in an email that they will not object to the revised plans.

Ms. Serie clarified for a Board member that the garage will be extended 1.5 feet forward and the addition at the rear will be extended 2 feet further back.

Mr. Becker said that the Petitioner did everything that the Board asked them to do.

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

Mr. Becker read the Planning Board recommendation.

Mr. Covo 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.

Mr. Covo voted aye.

Mr. Adams voted aye.

Mr. Becker voted aye.

Mr. Adams moved, Mr. Covo seconded the motion, and the Board voted unanimously to authorize the Executive Secretary to sign the signature pages of the decisions on their behalf.

Mr. Covo voted aye.

Mr. Adams voted aye.

Mr. Becker voted aye.

As there was no further business to come before the Board, the hearing was adjourned at 11:05 pm.

Respectfully submitted,

Lenore R. Mahoney  
Executive Secretary