

**ZONING BOARD OF APPEALS**

888 WORCESTER STREET • SUITE 160 • WELLESLEY, MA 02482

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WALTER B. ADAMS  
DEREK B. REDGATE  
PETER COVO

October 5, 2023

Remote

7:30 pm

Zoning Board of Appeals Members Present:

J. Randolph Becker  
David G. Sheffield  
Walter B. Adams

**BUSINESS MEETING****ZBA 2023-03, JIMMI BAZZARI, 765 WORCESTER STREET**

Mr. Becker said that during the construction process, people working on the project discovered that they could not access the garage without knocking down a corner of the house. He said that they asked if they can move the garage back. He said that the left side yard setback which had previously complied, will now be more compliant as the garage moves back. He said that the request before the Board is for a determination that the proposed change is a minor modification that does not require reopening the public hearing.

Mr. Becker said that both of the plot plans are dated 6/28/22. Mr. Sheffield said that the only difference is that the square representing the garage is moved back further from the two story house at 765 Worcester Street. Mr. Becker said that in the original drawing, the distance from the property line to the corner of the garage was 20.7 feet and it is 24.4 feet for the moved garage. He said that while that is not necessarily a small change, it is a minor modification that does not require reopening the public hearing. Mr. Sheffield said that he agreed with that. He said that because of the shape of the lot, it moves the garage to a less restrictive location. He said that it was unclear to him how the maneuverability of a car and the garage is much improved. Mr. Adams said that it increases the side yard setback. He said that it does not make things any worse than before and might make it better. Mr. Sheffield agreed. Mr. Adams said that it is a minor thing at the back of the property and will not be noticed as much by the public on the street. Mr. Sheffield said that it will not be noticed much by the abutters.

Mr. Sheffield moved, Mr. Adams seconded the motion, and the Board voted unanimously to find that the change in the plan to move the garage further to the rear of the property is a minor modification and approve the change. Mr. Adams said that approval would be subject to a condition that a new plot plan be submitted that has a more recent date than the original plot plan.

Mr. Adams voted aye.  
Mr. Sheffield voted aye.

Mr. Becker voted aye.

## PUBLIC HEARING

### ZBA 2023-43, JILL MURPHY, 48 PARKER ROAD

Mr. Sheffield moved, Mr. Adams seconded the motion, and the Board voted unanimously to continue the hearing, without discussion, to November 2, 2023.

Mr. Adams voted aye.  
Mr. Sheffield voted aye.  
Mr. Becker voted aye.

### ZBA 2023-54 WELLESLEY HISTORICAL SOCIETY, 323 WASHINGTON STREET

Mr. Sheffield moved, Mr. Adams seconded the motion, and the Board voted unanimously to continue the hearing, without discussion, to November 2, 2023.

Mr. Adams voted aye.  
Mr. Sheffield voted aye.  
Mr. Becker voted aye.

### ZBA 2023-55, LINEAR RETAIL WELLESLEY #1 LLC, 74 CENTRAL STREET

Present at the public hearing was Heather Dudko, who said that she works for the sign installer, National Sign and Jones Sign, and Brian Fung, representing Shake Shack.

Ms. Dudko said that Shake Shack is a new tenant in the strip plaza on Central Street and will be located on the far left side, on the corner of Cross and Central Streets. She said that the request is to install three wall signs where only one is allowed and four very small vinyl window/door signs where one is allowed. She said that the relief will be for two wall signs and three vinyl door signs.

Ms. Dudko said that the wall signs are 32 square feet, non-illuminated, with channel letters mounted on a backer panel and an exterior light source above the sign. She said that the lettering is 14 inches. She said that 32 square feet is the size of the entire sign with the backer.

Ms. Dudko said that one sign is proposed on the front elevation above the public entrance, a second sign will be on the east elevation, and a third sign will be on the south elevation facing the parking lot.

Ms. Dudko said that they met with the Design Review Board (DRB), who suggested that the sign at the back be moved to be centered over the awnings. She said that her client would prefer to not move it there because of visibility concerns. She said that her client and the property owner prefer that it be at the right end of the building, as shown on Sheet 5.0. She said that the door at the back is a service door for deliveries and things of that nature and is not a public entrance.

Mr. Becker asked about access from the back to the business entrance. Mr. Fung said that customers will have to walk around the building from the parking lot to enter the building on Washington Street. Board members said that the sign at the back and the sign on Cross Street are building identification signs, not entrance identification signs.

Ms. Dudko said that all of the existing awnings on the building will be recovered in black with no graphics and no illumination.

Mr. Becker asked about signage for the other two tenants. Ms. Dudko said that she did not have that information.

Mr. Sheffield asked if the other tenant entrances will be off of the parking lot. Mr. Fung said that there are no tenants there now. He said that he believes that the other tenants can use the back entrances off the parking lot. Mr. Sheffield confirmed that the doorway locations have been provided to the new tenants. Mr. Adams said that a single tenant space has been turned into three spaces. He said that they may be small enough so that they only need one entrance and exit. Mr. Sheffield said that if there are doors to the new proposed tenants, their signs will be over the doors on the parking lot side. Ms. Dudko said that there does not appear to be any area for people to enter from the front. She said that looking from the parking lot to the left, the bank is in what appears to be a separate building and has an entrance at the back.

Mr. Becker said that Shake Shack will be using up all of the capacity for signs. Ms. Dudko said that if the space is leased to a new tenant, they will be allowed to have a sign over the public entrance at the back. She said that the request before the Board is to exceed the number of signs allowed for Shake Shack.

Mr. Becker said that there is no public entrance on the eastern façade. He said that is one of the signs that make up the difference between what is allowed and the requested.

Mr. Sheffield said that because there is no entrance on the parking lot side, it would be helpful to have an arrow to direct people to the front of the building. Ms. Dudko asked about adding the words, "entrance around the corner," to the sign on the rear. Mr. Sheffield said that it could be a triangle with a point going to the right around the corner with the two smaller angles the same height as the sign. He said that will tell the whole story graphically. Mr. Adams said that they might need to widen the sign or reduce the size of the lettering to keep it in the space that is shown on the plans. He said that the purpose is just to direct people.

Mr. Becker said that the tenants further west on this block have signs on Central Street and on the parking lot side. Mr. Fung said that the door at the back for Shake Shack is not a public entrance because the kitchen is at the back.

Mr. Adams asked about the number of seats in the restaurant. He said that if there are more than 50, the back door will probably be needed as an exit. Ms. Dudko said that the door on the east elevation on Cross Street is an emergency exit.

Ms. Dudko said that the signs on the east and south elevations are for identification of the tenant and the building. She said that the sign on the north side is to identify the entrance.

Mr. Adams said that Page 7 shows the front elevation and the back elevation. He asked where the third sign will be located. Ms. Dudko said that the main entrance is on Central Street, the south elevation is at the parking lot where deliveries will go, and the east elevation, shown on Page 4 is on Cross Street and is a non-public entrance/emergency exit.

Mr. Becker said that on Page 5, the Shake Shack sign is not over the door. Ms. Dudko said that it is at the right end of the building because there will be other tenants to the left. She said that is the property owner's preferred placement of the sign.

Mr. Sheffield said that Page 1 shows the location of the signs on the plan. He confirmed that the dashed line in the plan indicates the tenant space. He said that he was not sure if it is important that the sign backs up to the tenant space.

Mr. Becker asked about the public entrance for Shake Shack. Ms. Dudko said that it is on Central Street.

Mr. Sheffield said that he would define the sign on the south elevation as a directional sign from the parking lot. He said that the addition of an arrow makes sense.

Mr. Becker said that he did not see the benefit of the Cross Street sign. Ms. Dudko said that sign would probably help if you are traveling north up Central Street. She said that you would not see the sign parallel to Central Street or at the back. Mr. Sheffield said that a benefit could be that it gives you an opportunity to pull into the parking lot.

Ms. Dudko said that there is parking on Central Street, Cross Street and at the back.

Mr. Becker said that the location of the trees will make it difficult to see the sign on Cross Street. He said that the bulk of the traffic is on Central Street.

Mr. Sheffield discussed recent sign approvals for Oath Pizza on Linden Street. He said that there is a similar organization of the signs.

Mr. Adams said that no other tenant would benefit from a sign on Cross Street.

Mr. Sheffield discussed adding a triangle to extend the body of the sign. Ms. Dudko said that adding it will increase the size of the sign. Mr. Sheffield said that sign could be smaller than the other signs.

Mr. Becker confirmed that the sign is the hamburger logo and the words, "Shake Shack."

Ms. Dudko asked about extending the backer and adding an arrow. Mr. Sheffield said that it would be good to have some separation between the arrow and the sign. He said that the arrow could be the same color as the sign. He said that it could go on the backer.

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

Ms. Dudko said that there are four window vinyls on the doors, as shown on Page 7. She said that there will be two small vinyl letter sets on the entrance door, a vinyl lettering of #74, and small vinyl lettering on the back elevation to identify the door for deliveries.

Mr. Adams discussed continuing the matter so that the Petitioner can come back with a revised plan.

Mr. Fung asked if the Board can approve the two other signs. Mr. Becker said that the Board cannot close the hearing because it needs to take in materials. Mr. Adams discussed approving everything except for the sign and then filing a new petition.

Mr. Fung said that the anticipated opening date is in May of 2024.

Mr. Adams moved, Mr. Sheffield seconded, and the Board voted unanimously to continue the hearing to November 2, 2023, subject to submittal of plans for a revised sign on the south, parking lot side.

Mr. Adams voted aye.

Mr. Sheffield voted aye.

Mr. Becker voted aye.

ZBA 2023-56, 16 WELLESLEY AVENUE, LLC

Present at the public hearing was David Himmelberger, Esq, representing 16 Wellesley Avenue LLC.

Mr. Himmelberger said that the request is for a special permit to enclose two existing covered first floor porches, and to winterize or otherwise condition a second floor enclosed sunroom porch above the front porch to make it habitable space. He said that it is a pre-existing nonconforming two-family dwelling on a pre-existing nonconforming lot at the corner of Wellesley Avenue and Atwood Street, in a General Residence District. He said that the lot size is 5,204 square feet. He said that the front yard setback is 29.8 feet on Wellesley Avenue, which presents as the front. He said that it is a corner lot and the second front yard setback to Atwood Street is 9.4 feet. He said that the side yard setbacks are 8.6 and 10.8 feet. He said that enclosure of the porches and conditioning of a previously enclosed porch do not expand the footprint of the existing structure. He said that the building is undergoing a gut renovation with an interior renovation as well. He said that it was the Building Inspector's opinion that, as the work was being done within the existing nonconforming setbacks, a special permit is required. He said that following the Bjorklund Case, the request is for the Board to find as a matter of law that the enclosure of the porches and the conditioning of enclosed other space does not constitute an intensification of the pre-existing nonconforming structure. He requested that the Board either make a finding that there is no intensification or if there is, that it will not be substantially more detrimental than the existing nonconformities.

Mr. Himmelberger said that the plan that was submitted shows two ac condensers. He said that relief was not sought for the condensers. He said that the Petitioner will have to come back before the Board or change the condensers to heat pumps. He said that the request before the Board is to enclose the porches and to condition space in a previously enclosed porch.

Mr. Adams said that it is a small lot. He confirmed that this is an existing two-family dwelling.

Mr. Becker said that this property has a lot of nonconformities. He said that if the Board believes that none of the nonconformities change, Bjorklund applies and the Board does not have to do anything beyond accepting that is the case and grant the permit because that means that the Petitioner is entitled to a permit. Mr. Sheffield said that there is no intensification of the nonconformities. He said that the improvements on the corner of Atwood Street will be welcomed by the neighborhood. Mr. Himmelberger said that it is a tired looking building.

Mr. Adams asked if the Petitioner considered extending the roof to the front of the porches to be enclosed or turn the flat roof section to become a deck. He said that it is up high enough so that it will not be awkward that the gable roof stops 7.5 feet short of the front façade of what used to be open porches.

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

Mr. Becker read the Planning Board recommendation.

Mr. Sheffield moved, Mr. Adams seconded the motion, and the Board voted unanimously to approve a special permit, finding that there was no intensification of an existing nonconformity and that the proposed changes will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Mr. Sheffield voted aye.

Mr. Adams voted aye.

Mr. Becker voted aye.

ZBA 2023-57 EAST-WEST ENTERPRISES CO., LTD, 555 WASHINGTON STREET (FLYTE 70)

Present at the public hearing were Elena Frankel and Carolyn Barber, co-founders of Flyte 70.

Ms. Frankel said that the sign was approved by the Design Review Board (DRB) after three tries. She said that the request is for a special permit for window decals, not the large plaque sign above. She said that sign was already approved and installed.

Mr. Becker said that whoever worked on the last revision to the sign requirements for the Zoning Bylaw did not have anything like this in mind. He said that he was struggling with how to apply the Zoning Bylaw to this particular proposal.

Mr. Sheffield said that there is no harm, no foul with the window graphics.

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

Mr. Sheffield said that the Zoning Bylaw seems to have been written for people looking at signs while driving their cars. He said that the window graphics are for people walking on the sidewalk adjacent to the building.

Mr. Becker discussed the DRB letter. He asked if the presentation to the Board is the smaller of the two wall sign options. Ms. Frankel said that they submitted the one that is installed. Mr. Becker said that the DRB discussion is about the wall sign, not the window graphics.

Mr. Becker read the Planning Board recommendation.

Mr. Adams moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to make findings in accordance with Section 5.18.H.3 A-F of the Zoning Bylaw and to approve a special permit.

Mr. Sheffield voted aye.  
Mr. Adams voted aye.  
Mr. Becker voted aye.

ZBA 2023-58, UNITARIAN UNIVERSALIST SOCIETY OF WELLESLEY HILLS, 309 WASHINGTON STREET

Present at the public hearing was James McLaren, representing the Unitarian Universalist Society of Wellesley Hills. Mr. McLaren said that the sign post has been in place for 20 plus years. He said that three years ago, they replaced the sign with a newer one. He said that it was done without a permit. He said that the original post was not permitted in 1998. He said that in 2019 they replaced it with a new sign and there is no permit for that. He said that one and a half years ago, the sign blew over in a windstorm. He said that the 6 by 6 wood post finally gave out. He said that the sign was damaged and repaired. He said that when they went to put it back up, they discovered the permitting issues. He said that the Design Review Board approved the sign. He said that he submitted a photograph of the sign as it appeared when it was standing. He said that the request to be able to put it back where it was. He said that the location is an issue because it is 6 feet from the property line where 15 feet is required, so a special permit is required.

Mr. Sheffield said that an existing tree is located 15 feet from the property line.

Mr. Becker said that the property is located in a General Residence District. He said that there is a mix of residences and other uses on the northern side of Washington Street. He said that what the Zoning Bylaw anticipates for setting requirements for residential districts is not like anything that one would do on a site like this. He said that putting the requirements to the side, he questioned whether this makes sense. He confirmed that the granite standing sign will remain. He said that there will be two standing signs. He said that there are a lot of nonconformities that do not make sense in this application.

Mr. Adams asked if the full page photograph with the blue sign is what is there now. He said that it appears to encroach on the sidewalk. He asked if the street is to the right at that point. Mr. McLaren said that it is. Mr. Adams said that the sign is closer to the driveway to the parking lot. He said that it is shown on the plot plan.

Mr. Sheffield said that the post is 6 feet from the property line but the sign is not. Mr. Adams said that the sign will be less than six feet but will not encroach over the public sidewalk. Mr. Becker said that sidewalk is for the parking lot and is not a public sidewalk. Mr. Adams said that he assumed that the public sidewalk starts at the red line. Mr. McLaren said that it is a public sidewalk.

Mr. Becker confirmed that it will be a double-sided sign.

Mr. Sheffield said that the stone pier is on the opposite side of the driveway at the property line.

Mr. Sheffield said that the photograph on the lower left of three shows no leaves on the trees. He said that space will be occupied by the lower branches of the tree for most of the year. Mr. McLaren said that they try to keep the branches trimmed so that the sign is visible.

Mr. Adams said that there are vehicular traffic signs on the side of the entrance to the parking lot. He asked if they will be impacted in any way. Mr. McLaren said that they will not be impacted.

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. Sheffield seconded the motion, and the Board voted unanimously to approve a special permit for the sign location, with the post being located no closer than 6 feet between the property and Washington Street, in compliance with 5.28 .H.3. A-F of the Zoning Bylaw.

Mr. Sheffield voted aye.

Mr. Adams voted aye.

Mr. Becker voted aye.

#### ZBA 2023-44, JEFFREY HIBBARD, 6 DUNEDIN ROAD

Present at the public hearing was Jeffrey Hibbard, the Petitioner, who said that he came before the Board in August requesting a special permit for a farmers porch on the front of the house and to continue the footprint on the right side with an addition at the back. He said that he has since changed the plans so that there is no farmers porch and the new addition will be stepped in. He said that the new addition will meet all of the setback requirements. He said that he will need approval of a special permit to remove the roof on the existing nonconforming house.

Mr. Adams said that the Board got an email from the Inspector of Buildings, Michael Grant, dated October 5, 2023, that discussed his opinion that the proposed work would require a special permit. Mr. Adams said that the Board had previously received a request to withdraw the petition. He said that he was inclined to consider this for approval of a special permit.

Mr. Becker said that the changes that are before the Board were delivered within the one week period. He said that the Board can either accept the changes, continue the hearing, or deny it. He said that it looks straight forward enough to him.

Mr. Adams said that the one week submittal period is to allow the Board enough time to review the materials. He said that he was able to review the materials currently before the Board. Mr. Becker said that the changes that were made, particularly narrowing down the addition at the back so that the east elevation complies with the setback makes this straight forward. He said that all of the things that were nonconforming in the existing have been corrected to comply or have been changed to be better than they were. He said that the lot area is too small but the frontage is okay. He said that the setbacks are okay except for the existing front facade and that is not made any worse.

Mr. Becker said that the proposed building height is calculated incorrectly on the diagram that is on the plot plan. Mr. Adams said that Mr. Grant's email said that the maximum height for one and two family dwellings is 36 feet. Mr. Hibbard said there was a typo. Mr. Becker said that the diagram in the upper right of the plot plan says that the proposed peak is 235.9 and the average grade is 202.2, so that proposed building height is 35.7 feet, not 35.9 feet. Mr. Adams said that a corrected plot plan should be submitted.

Mr. Adams said that Mr. Hibbard did what that Board had hoped for. He said that there may be some hardship because the width of the addition was changed, which he appreciated. He said that Mr. Hibbard could not move the whole thing over but he did narrow the addition.

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. Sheffield 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. Sheffield voted aye.

Mr. Adams voted aye.

Mr. Becker voted aye.

Mr. Adams said that the project was tastefully done.

ZBA 2023-45, ROBERT KAENEMAN, 53 PLEASANT STREET

Present at the public hearing were David Himmelberger, Esq., Robert Kaeneman and Sneha Patel Kaeneman, the Petitioner.

Mr. Himmelberger said that the request was for modification of a variance or a special permit. He said that the matter was previously continued as the Board had expressed concerns about the unbroken length on the right side of the house. He said that the Board suggested that if the rear addition was jogged inward, it would significantly address the concern. He said that the Applicant reduced the width of the addition by 3 feet so that it is inset from the main body of the house.

Mr. Becker asked about TLAG for this addition. Mr. Himmelberger said that he received it today but did not forward it, as the Board does not want to receive materials on the day of the hearing. He said that the proposed TLAG is 5,490 square feet on an oversized lot. He said that it is a two-family dwelling.

Mr. Sheffield said that the long stairway shown on Plan A3.1 might need a landing. Mr. Adams said that the drawings do not show the open stair for the building. Mr. Kaeneman said that there is a reference on the plot plan to the deck upstairs on the back of the building. He said that the architect changed what was a long run of stairs. Mr. Adams confirmed that no run of stairs is more than 12 feet vertical.



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

Mr. Becker read the Planning Board recommendation.

Mr. Adams said that the Applicant responded to the Board's concern about the length of the façade. Mr. Himmelberger said that what the Board raised made sense. He said that it is a superior look now because of the jog.

Mr. Kaeneman said that he asked the architect to clean up the drawings. He said that was a discrepancy on the plan where the foundation was not clean.

Mr. Becker said that this is a two-family house. He said that when you look at Large House Review and what used to be Section 17 of the Zoning Bylaw, this does not fit neatly into those molds.

Mr. Adams moved, Mr. Sheffield 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. Sheffield voted aye.

Mr. Adams voted aye.

Mr. Becker voted aye.

Mr. Adams moved, Mr. Sheffield seconded the motion, and the Board voted unanimously to authorize the Executive Secretary to sign the decisions on the Board members' behalf.

Mr. Adams voted aye.

Mr. Sheffield voted aye.

Mr. Becker voted aye.

As there was no further business to come before the Board, the hearing was adjourned at 9:03 pm.

Respectfully submitted,

Lenore R. Mahoney  
Executive Secretary