

TOWN OF WELLESLEY



MASSACHUSETTS

2024 APR 25 PMZ: 06

ZONING BOARD OF APPEALS  
WELLESLEY, MASSACHUSETTS

## ZONING BOARD OF APPEALS

888 WORCESTER STREET • SUITE 160 • WELLESLEY, MA 02482

J. RANDOLPH BECKER, CHAIRMAN  
ROBERT W. LEVY, VICE CHAIRMAN  
DAVID G. SHEFFIELD

LENORE R. MAHONEY  
EXECUTIVE SECRETARY  
TELEPHONE  
(781) 489-7450

WALTER B. ADAMS  
DEREK B. REDGATE  
PETER COVO

ZBA 2023-68-Amended  
Petition of 31 Oak Street LLC  
31 B & C Oak Street

Pursuant to due notice, the Special Permit Granting Authority held a Remote Public Hearing on Thursday, December 7, 2023, at 7:30 pm, on the petition of 31 Oak Street, LLC requesting a Variance pursuant to the provisions of Section 5.3 and Section 6.2 of the Zoning Bylaw for construction of a three-unit townhouse on a lot with less than required frontage and front yard width, at 31B & 31C Oak Street, in a General Residence District.

On November 1, 2023, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

The Board held public hearings on December 7, 2023, March 21, 2024 and April 11, 2024.

Present at the public hearings were David Himmelberger, Esq, Peter Lewandowski, Architect, LR Designs, Albert Azatyants, Stephan Bilharz, James Rissling and Guillermo Beltran, representing 31 Oak Street LLC, the Petitioner.

Mr. Himmelberger said that the property is located in a General Residence District with 70 feet of frontage. He said that the combined square footage of lots 31B and 31C Oak Street is 22,000 square feet. He said that Section 2.3 of the Zoning Bylaw requires a minimum frontage of 120 feet to construct the three proposed townhouse units. A Board member said that frontage would be an issue even if the plan was to build a single structure on the lot.

Mr. Himmelberger said that the property is located in the midst of a number of other townhouse units at 29 to 31 Oak Street and 33 to 39 Oak Street. He said that although other lots in the neighborhood are long and narrow, this lot is unusual in that it is a 70 foot by 312 foot single lot. Mr. Lewandowski said that there is an eight to nine foot change in elevation from the front of the building site to the back section beyond the existing one family house at 31B Oak Street.

Mr. Himmelberger said that a new bylaw in the 1950's required frontage for every lot. He said that 29 and 31 Oak Street were taken out of common ownership but 31B and C were not. He said that lots 23, 25 and 27 were created one week before the frontage requirement went into existence. He said that lots 41A, 49 and 51 are rear lots with no frontage. He said that at the time of the bylaw change, the owner at 31B and C Oak Street did not have the understanding that other owners did about getting property out of common ownership. He said that 31B and C are merged for zoning purposes.

The Board discussed concerns about density and maneuverability on such a tight site with the proposed project. The Chairman said that according to the bylaw, customary Site Plan Approval applies here. He said that when the project comes before the Board for Site Plan Approval, the concerns that neighbors submitted to the Board can be addressed. He said that without relief for frontage, there can be no project. He said that when the two properties are put together and they are registered at the Registry of Deeds, the property goes from Table 1 to Table 3 of the Zoning Bylaw and 90 feet of frontage is required.

Francesca Wier, Windsor Oaks Village Condominiums, said that she is an abutter on the left side of the property. She discussed concerns about the proposal to build three 3,600 square foot units or alternative plans. She asked that the Board wait until the project comes for Site Plan Approval before granting variances.

Belinda Harter, 33A Oak Street, said that she is an abutter on the left side of the property. She discussed concerns about setbacks and the impact of the proposed project on the neighbors. She asked about Adequacy of the Way review for this project. Mr. Himmelberger said that Oak Street is a public way, so Adequacy of the Way review is not required. Ms. Harter discussed concerns about lighting, electric, utilities, emergency facilities, environmental report and safety. The Chairman said that those issues will be discussed when the project comes before the Board for Site Plan Approval.

Glen Stevens, 33A Oak Street, said that setback requirements protect existing property owners. He discussed concerns about reducing the setbacks and the impacts on his property, effect on his property valuation, obstructed views with a 27 foot tall, 120 foot long structure that is only 20 feet away, density of the project, and change to the environment that he and Ms. Harter currently enjoy. He discussed safety concerns with the doors being located so close to the roadway.

Dana Lampert, 29B Oak Street, said that he bought the property in June of 2023. He discussed concerns about privacy, density, and UPS truck and snow plow activity. He said that they looked at the bylaw and thought that only two units could be built next door.

The Chairman said that in looking at the history of Oak Street, the lots are all narrow and deep. He said that prior Zoning Board of Appeals decisions for 23-25, 27, 29, 49 and 51 Oak Street referred to financial hardship, with the consequences of the financial hardship being that you could not build on the lot. He said that is applicable in this case as well. He said that while 70 feet is what it is, everyone else in the neighborhood except this particular piece of land, came timely to get the relief that the Zoning Bylaw anticipated.

The Chairman said that two prior Zoning Board of Appeals decisions for the properties at 31B and 31C Oak Street discussed an easement or a right of way that allowed the back property to access Oak Street. Mr. Himmelberger said that it is not a recorded easement but can be found in the deed history as a

reserved easement. He said that the easement does not appear on the proposed plot plan because the lots are deemed merged for zoning purposes and, if that is the case, the easement becomes moot.

On April 4, 2024, a decision for a variance that granted relief for front yard width and frontage was time stamped in the Town Clerk's Office.

At a public hearing held on April 11, 2024, the Board discussed the Petitioner's request for a variance for relief for side yard setbacks. The Board also reviewed proposed alternative plans to place two-unit structures on the lots at 31B and 31C Oak Street. A Board member said that with either project, there are constraints with the lot itself.

Mr. Himmelberger said that in his letter to the Board, dated February 2, 2024, the request was for a variance for side yard setbacks for a three-unit townhouse, with a 22.9 foot left side yard setback and a 21.1 foot right side yard setback. He said that the request for the variance was predicated on the narrow shape of the lot at 70 feet wide and over 300 feet deep. Mr. Lewandowski said that the side yard setbacks of 22.9 feet and 21.1 feet were measured to the edge of the building. He said that the proposed setbacks will be 20 feet on either side where 25 feet is required.

#### Statement of Facts

The subject property is located at 31B & 31C Oak Street, in a General Residence District, with a minimum frontage and front yard width of 70 feet, where Section 5.3, Table 3 of the Zoning Bylaw requires 90 feet and Section 2.2 of the Zoning Bylaw requires 120 feet. Section 2.2 of the Zoning Bylaw requires 25 foot side yard setbacks for conventional townhouse structures of three or more town houses.

The Petitioner is requesting a Variance pursuant to the provisions of Section 5.3 and Section 6.2 for construction of a three-unit townhouse on a lot with less than required frontage and front yard width.

The Petitioner is requesting a Variance pursuant to the provisions of Section 5.3 and Section 6.2 for construction of a three-unit townhouse with a minimum left side yard setback of 20 feet and a minimum right side yard setback of 20 feet.

Letters to Zoning Board of Appeals, dated 10/31/23, 2/2/24, and 4/5/24, with attachments, from David J. Himmelberger, Esq., a Plot Plan, dated 10/31/23, revised 1/31/24, stamped by Christopher C. Charlton, Professional Land Surveyor, Civil Plans 1-4, dated 1/31/24, stamped by Edmond T. Spruhan, P.E. and Christopher C. Charlton, Professional Land Surveyor, Floor Plans and Elevation Drawings, dated 10/30/23, revised 1/10/24, and Proposed: Footprint 2 Front 2 Rear Plan, dated 4/3/24, prepared by LR Designs, Stormwater Report, dated 1/30/24, and Turning Analysis, dated 1/24/24, stamped by Edmond T. Spruhan, P.E., and photographs were submitted.

On December 5, 2023, the Planning Board reviewed the petition and recommended that a Variance be approved.

On March 21, 2024, George J. Saraceno, Assistant Town Engineer, submitted comments.

Decision

It is the opinion of this Authority that literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the petitioner owing to circumstances relating to the shape of such land, which does not generally affect the zoning district in which it is located, the hardship has not been self-created, and desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

Therefore, the requested Variance from the terms of Section 5.3 and Section 6.2 of the Zoning Bylaw for construction on a lot with less than required frontage and front yard width is granted.

Therefore, the requested Variance from the terms of Section 5.3 and Section 6.2 of the Zoning Bylaw for construction of a three-unit townhouse with less than required side yard setbacks is granted, in accordance with:

- Proposed Plot Plan, dated 1/31/2024, stamped by Christopher C. Charlton, Professional Land Surveyor.

The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed plans.

If installation has not commenced, except for good cause, the Variance shall expire one year after the date time stamped on this decision.

2024 APR 25 PM12:06  
TOWN OF NEW YORK  
WILLIAMSBURG

ZBA 2023-68-Amended  
Petition of 31 Oak Street LLC  
31 B & C Oak Street

APPEALS FROM THIS DECISION,  
IF ANY, SHALL BE MADE PURSUANT  
TO GENERAL LAWS, CHAPTER 40A,  
SECTION 17, AND SHALL BE FILED  
WITHIN 20 DAYS AFTER THE DATE  
OF FILING OF THIS DECISION IN THE  
OFFICE OF THE TOWN CLERK.

J. Randolph Becker (a.m.)  
J. Randolph Becker, Chairman

David G. Sheffield (a.m.)  
David G. Sheffield

Peter Covo  
Peter Covo

ZBA 2023-68-Amended  
Applicant 31 Oak Street LLC  
Address 31 B & C Oak Street

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

In accordance with Section 11 of Chapter 40A of the Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Wellesley, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Date:

Attest:

Cathryn Jane Kato  
Town Clerk

cc: Planning Board  
Inspector of Buildings  
lrm

2024 APR 25 PM12:06

WELLESLEY MA 02481  
TOWN CLERK'S OFFICE



# THE SHERWIN LAW FIRM

## ATTORNEY AT LAW

May 3, 2024

VIA EMAIL PDF & UPS

Town Clerk  
Town of Wellesley  
888 Worcester Street, Suite 140  
Wellesley, MA 02482

Re: Notice of Zoning Appeal (31B & 31C Oak Street)

Dear Sir or Madam:

This is notice that a G.L. c. 40A, § 17 zoning appeal has been filed for the above-referenced decision. A copy of the amended complaint is enclosed.

Please do not hesitate to contact me with any questions or concerns.

Best,

*Adam D. Sherwin*  
Adam Sherwin, Esq.

Enclosures (1)

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, S.S.

NORFOLK SUPERIOR COURT  
NO. 2482CV00389

**BELINDA HARTER ET AL**

**Plaintiffs**

**v.**

**TOWN OF WELLESLEY  
ZONING BOARD OF APPEALS  
ET AL**

**Defendants**

94-11111-1-20240425

**AMENDED COMPLAINT**

NOW COME Plaintiffs and through their counsel bring this complaint for an appeal of a zoning decision from the Town of Wellesley's Zoning Board of Appeals ("ZBA").

**Procedural History**

Plaintiffs filed this lawsuit on April 23, 2024, appealing the ZBA's April 4, 2024 decision (ZBA 2023-68) that granted the Private Defendant a variance of the "minimum frontage and front yard width." (Exhibit A). The ZBA later approved a side yard setback for Private Defendant and subsequently filed an amended zoning decision, ZBA-68-Amended, on April 25, 2024. (Exhibit B). Plaintiffs have filed this amended complaint in response to this amende zoning decision.

**Parties**

**Plaintiffs**

1. Plaintiff Belinda Harter is a Massachusetts resident and the owner of 33A Oak

Street, Wellesley, Massachusetts.

2. Plaintiff Dana Lampert is a Massachusetts resident and the owner of 29A Oak Street, Wellesley, Massachusetts.

3. Plaintiff Dmytri Skuratovsky is a Massachusetts resident and the owner of 29B Oak Street, Wellesley, Massachusetts.

4. Plaintiff Julia Skuratovsky is a Massachusetts resident and the owner of 29B Oak Street, Wellesley, Massachusetts.

5. Plaintiff Michelle Yu is a Massachusetts resident and the owner of 33 Oak Street, Wellesley, Massachusetts.

6. Plaintiff Peter Wier is a Massachusetts resident and the owner of 37C Oak Street, Wellesley, Massachusetts.

7. Plaintiff Francesca Wier is a Massachusetts resident and the owner of 37C Oak Street, Wellesley, Massachusetts.

**Defendants**

8. Defendant Town of Wellesley ZBA is a municipal agency located at 888 Worcester Street, Suite 160, Wellesley, Massachusetts.

9. Defendants J. Randolph Becker, David G. Sheffield, and Peter Covo are all members of the Town of Wellesley's ZBA, located at 888 Worcester Street Suite 160, Wellesley, Massachusetts.

10. Defendant 31 Oak Street, LLC, upon information and belief, is a

Massachusetts limited liability company with a registered agent located at Albert Azatyants, 200F Main Street, Stoneham, Massachusetts. Defendant is the applicant for the ZBA decision that is the subject of this lawsuit.

**Statement of Facts**

11. This lawsuit is an appeal of a decision from the Town of Wellesley's ZBA concerning a proposal to develop 31B and 31C Oak Street, Wellesley, Massachusetts. 31B Oak Street presently consists of a single-story residential home and 31C Oak Street is a vacant lot.

12. The proposed development seeks to construct a three-unit townhouse on both properties.

13. Defendant 31 Oak Street, LLC, the developer, applied for a variance of the "minimum frontage and front yard width."

14. The ZBA held public hearings for this matter on December 7, 2023, March 21, 2024, and April 11, 2024. In a written decision entered with the Town of Wellesley's Town Clerk on April 4, 2024, the ZBA approved the variance for the minimum frontage and front yard width. (Exhibit A). In a written amended decision entered with the Town of Wellesley's Town Clerk on April 25, 2024, the ZBA approved variances for both the minimum frontage and front yard width and side yard setback. (Exhibit B).

**CAUSES OF ACTION**

**Count I – Annulment of Variance**  
(Minimum Frontage and Front Yard Width)

15. Plaintiffs restate and reaffirm all prior allegations.

Searched 1/10/2019  
Serialized 1/10/2019  
Indexed 1/10/2019  
Filed 1/10/2019

16. Plaintiffs are direct abutters to 31B and 31C Oak Street, Wellesley, Massachusetts and are aggrieved by the Board's decision.

17. The ZBA's decision states there is a "minimum frontage and front yard width of 70 feet, where Section 5.3, Table 3 of the Zoning Bylaw requires 90 feet and Section 2.2 of the Zoning Bylaw requires 120 feet." *Id.* at 3. The ZBA's decision fails to identify which one of these zoning ordinances applies to the subject properties.

18. The ZBA's decision only granted a variance "from the terms of Section 5.3" and not these other zoning requirements referenced in this decision.

19. The ZBA's decision failed to identify any special circumstances or conditions about 31B and 31C Oak Street, Wellesley, Massachusetts which are peculiar to this property and not the neighborhood as a whole.

20. The ZBA's decision further failed to identify any hardship that the applicant would suffer if the ZBA failed to grant this variance.

21. The ZBA failed to make any specific findings on the ZBA's reasoning for granting this variance.

22. The ZBA's decision to grant this variance was unreasonable, legally untenable, whimsical, capricious, and arbitrary and should be annulled.

Count II – Annulment of Variance  
(Side Yard Setback)

23. Plaintiffs restate and reaffirm all prior allegations.

24. The ZBA's decision failed to identify any special circumstances or conditions about 31B and 31C Oak Street, Wellesley, Massachusetts which are peculiar to this property and not the neighborhood as a whole.

25. The ZBA's decision further failed to identify any hardship that the applicant would suffer if the ZBA failed to grant this variance.

26. The ZBA failed to make any specific findings on the ZBA's reasoning for granting this variance.

27. The ZBA's decision to grant this variance was unreasonable, legally untenable, whimsical, capricious, and arbitrary and should be annulled.

## CONCLUSION

**WHEREFORE** Plaintiffs respectfully request that the Court do the following:

- A. Determine that the ZBA exceeded its authority in issuing these variances;
- B. Enter such other relief as may be just and appropriate.

Respectfully Submitted,

Plaintiffs  
By their attorney,

/s/ Adam Sherwin

Adam T. Sherwin, Esq. (BBO# 680751)  
The Sherwin Law Firm  
The Schrafft's Center Power House  
529 Main Street, Suite 200  
Charlestown, MA 02129  
(617) 336-3236 (p)  
(617) 284-6089 (f)  
adam@sherwinlawfirm.com

Dated: May 2, 2024

## CERTIFICATE OF SERVICE

I, Adam T. Sherwin, hereby certify that on May 2, 2024, I served a copy of this paper via Email PDF to the other parties in this case.

/s/ Adam T. Sherwin  
Adam T. Sherwin, Esq.

# Exhibit A

SEARCHED  
INDEXED  
SERIALIZED  
FILED  
2014-7-10 11:46

A True Copy  
ATTEST:

*Cathy Jane Katz*

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS  
888 WORCESTER STREET • SUITE 160 • WELLESLEY, MA 02482

J. RANDOLPH BECKER, CHAIRMAN  
ROBERT W. LEVY, VICE CHAIRMAN  
DAVID G. SHEFFIELD

LENORE R. MAHONEY  
EXECUTIVE SECRETARY  
TELEPHONE  
(781) 489-7450

WALTER B. ADAMS  
DERRICK B. REDIGATE  
PETER COVO

ZBA 2023-68  
Petition of 31 Oak Street LLC  
31 B & C Oak Street

Pursuant to due notice, the Special Permit Granting Authority held a Remote Public Hearing on Thursday, December 7, 2023, at 7:30 pm, on the petition of 31 Oak Street, LLC requesting a Variance pursuant to the provisions of Section 5.3 and Section 6.2 of the Zoning Bylaw for construction of a three-unit townhouse on a lot with less than required frontage and front yard width, at 31B & 31C Oak Street, in a General Residence District.

On November 1, 2023, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

The Board held public hearings on December 7, 2023 and March 21, 2024.

Present at the public hearings were David Himmelberger, Esq, Peter Lewandowski, Architect, LR Designs, Albert Azatyants, Stephan Bilharz, James Rissling and Guillermo Beltran, representing 31 Oak Street LLC, the Petitioner.

Mr. Himmelberger said that the property is located in a General Residence District with 70 feet of frontage. He said that the combined square footage of lots 31B and 31C Oak Street is 22,000 square feet. He said that Section 2.3 of the Zoning Bylaw requires a minimum frontage of 120 feet to construct the three proposed townhouse units. A Board member said that frontage would be an issue even if the plan was to build a single structure on the lot.

Mr. Himmelberger said that the property is located in the midst of a number of other townhouse units at 29 to 31 Oak Street and 33 to 39 Oak Street. He said that although other lots in the neighborhood are long and narrow, this lot is unusual in that it is a 70 foot by 312 foot single lot. Mr. Lewandowski said that there is an eight to nine foot change in elevation from the front of the building site to the back section beyond the existing one family house at 31B Oak Street.

Mr. Himmelberger said that a new bylaw in the 1950's required frontage for every lot. He said that 29 and 31 Oak Street were taken out of common ownership but 31B and C were not. He said that lots 23, 25 and 27 were created one week before the frontage requirement went into existence. He said that lots 41A, 49 and 51 are rear lots with no frontage. He said that at the time of the bylaw change, the owner at 31B and C Oak Street did not have the understanding that other owners did about getting property out of common ownership. He said that 31B and C are merged for zoning purposes.

The Board discussed concerns about density and maneuverability on such a tight site with the proposed project. The Chairman said that according to the bylaw, customary Site Plan Approval applies here. He said that when the project comes before the Board for Site Plan Approval, the concerns that neighbors submitted to the Board can be addressed. He said that without relief for frontage, there can be no project. He said that when the two properties are put together and they are registered at the Registry of Deeds, the property goes from Table 1 to Table 3 of the Zoning Bylaw and 90 feet of frontage is required.

Francesca Wier, Windsor Oaks Village Condominiums, said that she is an abutter on the left side of the property. She discussed concerns about the proposal to build three 3,600 square foot units or alternative plans. She asked that the Board wait until the project comes for Site Plan Approval before granting variances.

Belinda Harter, 33A Oak Street, said that she is an abutter on the left side of the property. She discussed concerns about setbacks and the impact of the proposed project on the neighbors. She asked about Adequacy of the Way review for this project. Mr. Himmelberger said that Oak Street is a public way, so Adequacy of the Way review is not required. Ms. Harter discussed concerns about lighting, electric, utilities, emergency facilities, environmental report and safety. The Chairman said that those issues will be discussed when the project comes before the Board for Site Plan Approval.

Glen Stevens, 33A Oak Street, said that setback requirements protect existing property owners. He discussed concerns about reducing the setbacks and the impacts on his property, effect on his property valuation, obstructed views with a 27 foot tall, 120 foot long structure that is only 20 feet away, density of the project, and change to the environment that he and Ms. Harter currently enjoy. He discussed safety concerns with the doors being located so close to the roadway.

Dana Lampert, 29B Oak Street, said that he bought the property in June of 2023. He discussed concerns about privacy, density, and UPS truck and snow plow activity. He said that they looked at the bylaw and thought that only two units could be built next door.

The Chairman said that in looking at the history of Oak Street, the lots are all narrow and deep. He said that prior Zoning Board of Appeals decisions for 23-25, 27, 29, 49 and 51 Oak Street referred to financial hardship, with the consequences of the financial hardship being that you could not build on the lot. He said that is applicable in this case as well. He said that while 70 feet is what it is, everyone else in the neighborhood except this particular piece of land, came timely to get the relief that the Zoning Bylaw anticipated.

The Chairman said that two prior Zoning Board of Appeals decisions for the properties at 31B and 31C Oak Street discussed an easement or a right of way that allowed the back property to access Oak Street. Mr. Himmelberger said that it is not a recorded easement but can be found in the deed history as a

A True Copy  
**ATTEST:**  
C. M. B. J. 1865

reserved easement. He said that the easement does not appear on the proposed plot plan because the lots are deemed merged for zoning purposes and, if that is the case, the easement becomes moot.

**Statement of Facts**

The subject property is located at 31B & 31C Oak Street, in a General Residence District, with a minimum frontage and front yard width of 70 feet, where Section 5.3 of the Zoning Bylaw requires 90 feet and Section 2.2 of the Zoning Bylaw requires 120 feet.

The Petitioner is requesting a Variance pursuant to the provisions of Section 5.3 and Section 6.2 for construction of a three-unit townhouse on a lot with less than required frontage and front yard width

Letters to Zoning Board of Appeals, dated 10/31/23 and 2/2/24, from David J. Himmelberger, Esq., a Plot Plan, dated 10/31/23, revised 1/31/24, stamped by Christopher C. Charlton, Professional Land Surveyor, Civil Plans 1-4, dated 1/31/24, stamped by Edmond T. Spruhan, P.E. and Christopher C. Charlton, Professional Land Surveyor, Floor Plans and Elevation Drawings, dated 10/30/23, revised 1/10/24, prepared by LR Designs, Stormwater Report, dated 1/30/24, and Turning Analysis, dated 1/24/24, stamped by Edmond T. Spruhan, P.E., and photographs were submitted.

On December 5, 2023, the Planning Board reviewed the petition and recommended that a Variance be approved.

### Decision

It is the opinion of this Authority that literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the petitioner owing to circumstances relating to the shape of such land, which does not generally affect the zoning district in which it is located, the hardship has not been self-created, and desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

Therefore, the requested Variance from the terms of Section 5.3 and Section 6.2 of the Zoning Bylaw for construction on a lot with less than required frontage and front yard width.

The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed plans.

If installation has not commenced, except for good cause, this Variance shall expire one year after the date time stamped on this decision.

TOP SECRET - 6M 8-15  
WELLESLEY MA 02481

- ZBA 2023-68  
Petition of 31 Oak Street LLC  
31 B & C Oak Street

A True Copy  
ATTEST  
Cathryn Jane Kato

2024 MAY - 7 AM 11:47

J. Randolph Becker (Am.)  
J. Randolph Becker, Chairman

David G. Sheffield (Am.)  
David G. Sheffield

Peter Covo  
Peter Covo

JOHN RICHARDSON, CLERK  
TOWN OF WELLESLEY, MASS.  
2024 MAY - 4 AM 8:45

ZBA 2023-68  
Applicant 31 Oak Street LLC  
Address 31 B & C Oak Street

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

In accordance with Section 11 of Chapter 40A of the Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Wellesley, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Date:

Attest:

Cathryn Jane Kato  
Town Clerk

cc: Planning Board  
Inspector of Buildings  
lrm

# Exhibit B

20210327-4411547

2024 APR 25 PM12:05  
TOWN CLERKS OFFICE  
WELLESLEY MA 02482

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS  
888 WORCESTER STREET • SUITE 160 • WELLESLEY, MA 02482

J. RANDOLPH BECKER, CHAIRMAN  
ROBERT W. LEVY, VICE CHAIRMAN  
DAVID G. SHEFFIELD

LENORE R. MAHONEY  
EXECUTIVE SECRETARY  
TELEPHONE  
(781) 489-7450

WALTER B. ADAMS  
DEREK B. REDGATE  
PETER COVO

ZBA 2023-68-Amended  
Petition of 31 Oak Street LLC  
31 B & C Oak Street

Pursuant to due notice, the Special Permit Granting Authority held a Remote Public Hearing on Thursday, December 7, 2023, at 7:30 pm, on the petition of 31 Oak Street, LLC requesting a Variance pursuant to the provisions of Section 5.3 and Section 6.2 of the Zoning Bylaw for construction of a three-unit townhouse on a lot with less than required frontage and front yard width, at 31B & 31C Oak Street, in a General Residence District.

On November 1, 2023, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

The Board held public hearings on December 7, 2023, March 21, 2024 and April 11, 2024.

Present at the public hearings were David Himmelberger, Esq, Peter Lewandowski, Architect, LR Designs, Albert Azatyants, Stephan Bilharz, James Rissling and Guillermo Beltran, representing 31 Oak Street LLC, the Petitioner.

Mr. Himmelberger said that the property is located in a General Residence District with 70 feet of frontage. He said that the combined square footage of lots 31B and 31C Oak Street is 22,000 square feet. He said that Section 2.3 of the Zoning Bylaw requires a minimum frontage of 120 feet to construct the three proposed townhouse units. A Board member said that frontage would be an issue even if the plan was to build a single structure on the lot.

Mr. Himmelberger said that the property is located in the midst of a number of other townhouse units at 29 to 31 Oak Street and 33 to 39 Oak Street. He said that although other lots in the neighborhood are long and narrow, this lot is unusual in that it is a 70 foot by 312 foot single lot. Mr. Lewandowski said that there is an eight to nine foot change in elevation from the front of the building site to the back section beyond the existing one family house at 31B Oak Street.

A True Copy

...One Kato

Mr. Himmelberger said that a new bylaw in the 1950's required frontage for every lot. He said that 29 and 31 Oak Street were taken out of common ownership but 31B and C were not. He said that lots 23, 25 and 27 were created one week before the frontage requirement went into existence. He said that lots 41A, 49 and 51 are rear lots with no frontage. He said that at the time of the bylaw change, the owner at 31B and C Oak Street did not have the understanding that other owners did about getting property out of common ownership. He said that 31B and C are merged for zoning purposes.

The Board discussed concerns about density and maneuverability on such a tight site with the proposed project. The Chairman said that according to the bylaw, customary Site Plan Approval applies here. He said that when the project comes before the Board for Site Plan Approval, the concerns that neighbors submitted to the Board can be addressed. He said that without relief for frontage, there can be no project. He said that when the two properties are put together and they are registered at the Registry of Deeds, the property goes from Table 1 to Table 3 of the Zoning Bylaw and 90 feet of frontage is required.

Francesca Wier, Windsor Oaks Village Condominiums, said that she is an abutter on the left side of the property. She discussed concerns about the proposal to build three 3,600 square foot units or alternative plans. She asked that the Board wait until the project comes for Site Plan Approval before granting variances.

Belinda Harter, 33A Oak Street, said that she is an abutter on the left side of the property. She discussed concerns about setbacks and the impact of the proposed project on the neighbors. She asked about Adequacy of the Way review for this project. Mr. Himmelberger said that Oak Street is a public way, so Adequacy of the Way review is not required. Ms. Harter discussed concerns about lighting, electric, utilities, emergency facilities, environmental report and safety. The Chairman said that those issues will be discussed when the project comes before the Board for Site Plan Approval.

Glen Stevens, 33A Oak Street, said that setback requirements protect existing property owners. He discussed concerns about reducing the setbacks and the impacts on his property, effect on his property valuation, obstructed views with a 27 foot tall, 120 foot long structure that is only 20 feet away, density of the project, and change to the environment that he and Ms. Harter currently enjoy. He discussed safety concerns with the doors being located so close to the roadway.

Dana Lampert, 29B Oak Street, said that he bought the property in June of 2023. He discussed ~~concerns~~ about privacy, density, and UPS truck and snow plow activity. He said that they looked at the bylaw and thought that only two units could be built next door.

The Chairman said that in looking at the history of Oak Street, the lots are all narrow and deep. He said that prior Zoning Board of Appeals decisions for 23-25, 27, 29, 49 and 51 Oak Street referred to financial hardship, with the consequences of the financial hardship being that you could not build on the lot. He said that is applicable in this case as well. He said that while 70 feet is what it is, everyone else in the neighborhood except this particular piece of land, came timely to get the relief that the Zoning Bylaw anticipated.

The Chairman said that two prior Zoning Board of Appeals decisions for the properties at 31B and 31C Oak Street discussed an easement or a right of way that allowed the back property to access Oak Street. Mr. Himmelberger said that it is not a recorded easement but can be found in the deed history as a

ZBA 2023-68-Amended  
Petition of 31 Oak Street LLC  
31 B & C Oak Street

reserved easement. He said that the easement does not appear on the proposed plot plan because the lots are deemed merged for zoning purposes and, if that is the case, the easement becomes moot.

On April 4, 2024, a decision for a variance that granted relief for front yard width and frontage was time stamped in the Town Clerk's Office.

At a public hearing held on April 11, 2024, the Board discussed the Petitioner's request for a variance for relief for side yard setbacks. The Board also reviewed proposed alternative plans to place two-unit structures on the lots at 31B and 31C Oak Street. A Board member said that with either project, there are constraints with the lot itself.

Mr. Himmelberger said that in his letter to the Board, dated February 2, 2024, the request was for a variance for side yard setbacks for a three-unit townhouse, with a 22.9 foot left side yard setback and a 21.1 foot right side yard setback. He said that the request for the variance was predicated on the narrow shape of the lot at 70 feet wide and over 300 feet deep. Mr. Lewandowski said that the side yard setbacks of 22.9 feet and 21.1 feet were measured to the edge of the building. He said that the proposed setbacks will be 20 feet on either side where 25 feet is required.

#### Statement of Facts

The subject property is located at 31B & 31C Oak Street, in a General Residence District, with a minimum frontage and front yard width of 70 feet, where Section 5.3, Table 3 of the Zoning Bylaw requires 90 feet and Section 2.2 of the Zoning Bylaw requires 120 feet. Section 2.2 of the Zoning Bylaw requires 25 foot side yard setbacks for conventional townhouse structures of three or more town houses.

The Petitioner is requesting a Variance pursuant to the provisions of Section 5.3 and Section 6.2 for construction of a three-unit townhouse on a lot with less than required frontage and front yard width.

The Petitioner is requesting a Variance pursuant to the provisions of Section 5.3 and Section 6.2 for construction of a three-unit townhouse with a minimum left side yard setback of 20 feet and a minimum right side yard setback of 20 feet.

Letters to Zoning Board of Appeals, dated 10/31/23, 2/2/24, and 4/5/24, with attachments, from David J. Himmelberger, Esq., a Plot Plan, dated 10/31/23, revised 1/31/24, stamped by Christopher C. Charlton, Professional Land Surveyor, Civil Plans 1-4, dated 1/31/24, stamped by Edmond T. Spruhan, P.E. and Christopher C. Charlton, Professional Land Surveyor, Floor Plans and Elevation Drawings, dated 10/30/23, revised 1/10/24, and Proposed: Footprint 2 Front 2 Rear Plan, dated 4/3/24, prepared by LR Designs, Stormwater Report, dated 1/30/24, and Turning Analysis, dated 1/24/24, stamped by Edmond T. Spruhan, P.E., and photographs were submitted.

On December 5, 2023, the Planning Board reviewed the petition and recommended that a Variance be approved.

On March 21, 2024, George J. Saraceno, Assistant Town Engineer, submitted comments.

Decision

It is the opinion of this Authority that literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the petitioner owing to circumstances relating to the shape of such land, which does not generally affect the zoning district in which it is located, the hardship has not been self-created, and desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

Therefore, the requested Variance from the terms of Section 5.3 and Section 6.2 of the Zoning Bylaw for construction on a lot with less than required frontage and front yard width is granted.

Therefore, the requested Variance from the terms of Section 5.3 and Section 6.2 of the Zoning Bylaw for construction of a three-unit townhouse with less than required side yard setbacks is granted, in accordance with:

- Proposed Plot Plan, dated 1/31/2024, stamped by Christopher C. Charlton, Professional Land Surveyor.

The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed plans.

If installation has not commenced, except for good cause, the Variance shall expire one year after the date time stamped on this decision.

2024 APR 25 PM 12:05  
TOWN CLERK'S OFFICE  
WELLESLEY, MA 01791  
S. G. MULLEN  
TOWN CLERK'S OFFICE  
WELLESLEY, MA 01791

ZBA 2023-68-Amended  
Petition of 31 Oak Street LLC  
31 B & C Oak Street

APPEALS FROM THIS DECISION,  
IF ANY, SHALL BE MADE PURSUANT  
TO GENERAL LAWS, CHAPTER 40A,  
SECTION 17, AND SHALL BE FILED  
WITHIN 20 DAYS AFTER THE DATE  
OF FILING OF THIS DECISION IN THE  
OFFICE OF THE TOWN CLERK.

*J. Randolph Becker (rm.)*  
J. Randolph Becker, Chairman

*David G. Sheffield (rm.)*  
David G. Sheffield

*Peter Covo (rm.)*  
Peter Covo

ZBA 2023-68-Amended  
Applicant 31 Oak Street LLC  
Address 31 B & C Oak Street

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

In accordance with Section 11 of Chapter 40A of the Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Wellesley, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Date:

Attest:

Cathryn Jane Kato  
Town Clerk

cc: Planning Board  
Inspector of Buildings  
lrm

2023 APR 25 PM 12:05  
WELLESLEY TOWN CLERK  
MA 02481