

**Town of Westwood
Zoning Board of Appeals
Carby Street Municipal Office Building
Meeting Minutes – September 20, 2017**

Members Present: David Krumsiek, Chairman, Douglas Stebbins, David Belcher

Staff Members Present Sarah Bouchard, Housing & Zoning Agent, Nora Loughnane, Director of Community & Economic Development

Mr. Krumsiek gave a brief description of the proceedings. All those present for the meeting who anticipated giving testimony were sworn in.

Applications

Address: 90 Canton Street

Petitioner: Steven Tseglin

Project: Application for Special Permit under §8.5

Mr. Krumsiek read the legal notice into the record.

On a motion by Mr. Stebbins which was seconded by Mr. Belcher, it was voted unanimously to continue the hearing to October 18, 2017 at 7 pm in Champagne Meeting Room.

Address: 247 Station Drive

Petitioner: NSTAR Electric d/b/a Eversource Energy

Project: Application for Special Permit under §4.3.2.7

Mr. Krumsiek read the legal notice into the record.

Steve Wiehe of Weston Sampson Engineers introduced the proposal for a solar canopy ground mounted system. 18 solar car ports would be installed in a parking lot area and generate 2.5 million kW annually. Mr. Wiehe stated that the proposal requires both the special permit under the Zoning Bylaw and an EIDR approval from Planning Board. The proposal went before Planning Board previously, where the applicant requested a waiver to lighting hours and a traffic study. Mr. Wiehe stated that the proposal meets all required characteristics of the bylaw, is compatible with adjacent areas, and proposes no substantive impacts on town services. He stated that the solar canopies will not be detrimental to the visual landscape, propose no impacts on the natural environment, create no additional impervious area and require no water or sewer connection.

Mr. Wiehe stated that the proposal will maintain access for emergency services. A turning movement plan was filed with the Fire Department, and locations of solar canopies were established to ensure that the largest fire truck could navigate tight turns access necessary points. Canopies will provide adequate height clearance points. Construction is anticipated to span 3-4 months, after which traffic will not increase and the proposal will require little to no maintenance.

Mr. Wiehe reviewed the changes that Planning Board requested in its EIDR hearing. The applicant plans to prepare diagrams that properly show the removal of trees in parking islands. At Planning Board's request, a detailed landscaping plan will be prepared to show the proposed replacement plants and a plan to address gaps in existing plantings on the perimeter of the property.

Mr. Wiehe presented photo simulations showing the proposed canopies from various viewpoints in the vicinity, as well as an aerial simulation.

Mr. Krumsiek asked if any simulations were made from the residential neighborhood.

Mr. Wiehe stated that there are minimal sightlines from public right of way.

Mr. Michael Singer of Brightfields Development discussed the concerns of an abutter who attended the Planning Board hearing relative to gaps in screening along the perimeter of the property. The applicant plans to address those gaps by increasing the vegetative border and filling in with new plantings. Mr. Singer stated that the applicant plans to choose planting species cooperatively with the Town Planner's recommendations, and will take direction from the abutter who requested lower vegetation for visibility gaps.

Mr. Stebbins asked if Eversource owns the property. Mr. Wiehe responded that it does. Mr. Stebbins further questioned what would happen upon sale of the property. Mr. Singer stated that the canopy structure will operate as an investor owned utility under the State Department of Energy, with power generated sold back through the power grid. Mr. Wiehe stated that it will be a registered asset to stay with Eversource even if property was sold.

Mr. Stebbins asked if there were comparable installations already in the area. Mr. Singer stated that an installation in Canton at the Reebok facility is similar, with solar canopies being promoted statewide. He stated that solar canopies take advantage of an unused asset, as parking lots are already paved over and constructed.

Mr. Belcher asked if any of the proposed solar canopies interfere with setbacks. Mr. Wiehe stated that the canopies are well within dimensional requirements.

Mr. Belcher asked if the construction was to be staged. Mr. Singer confirmed that construction would be staged and discussed the staging methodology, which would not require offsite parking for the 4 months of estimated construction.

Mr. Krumsiek opened the hearing up to the public for comment.

Ms. Loughnane addressed a request submitted by an abutter, Mr. Steven Rafsky, who came to Planning Board with some concerns regarding landscaping but was unable to attend the Zoning Board hearing. Mr. Rafsky requested that the ZBA allow testimony this evening but continue the hearing to a later date.

On a motion by Mr. Stebbins which was seconded by Mr. Belcher, it was voted unanimously to continue the hearing for Station Drive to Wednesday, September 27, 2017 at 7 pm in the Selectmen's Meeting Room at Town Hall, 580 High Street, Westwood, MA 02090.

Address: 26 Parker Street

Petitioner: Andisheh Andrew Kamranpour

Project: Application for Special Permit under § 4.5.2.2

Mr. Krumsiek read the legal notice into the record.

Mr. Kamranpour introduced the application. He stated that while in a single family zone, the home has always been a two family and now he would like to construct an addition. He stated that the addition will square off an existing corner, improve the appearance of the property and add about 300 additional square feet.

Mr. Krumsiek asked what abutting neighbors will be most affected by plan. Mr. Kamranpour stated that the neighbors' kitchen window will face the new addition, but the neighbor has stated he has no complaints.

Mr. Bill Gallagher, contractor, submitted a letter addressing the concerns expressed by the Board of Health in their memorandum. Mr. Kamranpour submitted a letter of support from the Zafft household, an abutter.

Mr. Stebbins asked if the property was owner occupied. Mr. Kamranpour confirmed that he resides in one unit and rents the other unit.

Mr. Krumsiek asked about the proposed usage of the garage. Mr. Kamranpour stated that it will continue to be used as storage.

Mr. Krumsiek opened the hearing up to the public for comment.

Hearing no comment, the ZBA proceeded to a motion.

On a motion by Mr. Stebbins which was seconded by Mr. Belcher, it was voted unanimously to approve the special permit application for 26 Parker Street including conditions by the Board of Health.

Address: 62 Colburn Street

Petitioner: Jacob Gadbois

Project: Application for Appeal under § 10.1.7

Mr. Krumsiek read the legal notice into the record.

Jacob Gadbois, of Masters Touch, and Larry Lodge, the homeowner, introduced the application. The owners purchased an existing home that faces Colburn Street and is located within setbacks. Upon building permit application to demolish and reconstruct, the Building Commissioner made a determination that the legal frontage should apply on Baker Street, because that frontage length is closer to meeting frontage requirements.

Mr. Gadbois stated that allowing frontage on Baker Street would trade one nonconformity for another, as the current house is only within all setbacks if the frontage is on Colburn Street. Mr. Gadbois read the zoning definition of a corner lot and stated that the property meets the stated requirements only if frontage is applied on Colburn Street. He further stated that the other homes on the block face away from Baker, with none utilizing frontage on Baker.

Mr. Gadbois stated that if frontage is applied to Baker, the dimensional requirements as applied give a very narrow "bowling alley" in which to build.

Mr. Belcher questioned whether zoning relief was originally awarded to allow the current house to be built. Mr. Gadbois stated his belief that that no relief was necessary because Colburn was considered at the time as the legal frontage.

Mr. Stebbins asked when and how the issue arose. Mr. Gadbois stated that it arose when a building permit to reconstruct was denied.

Mr. Stebbins asked if Colburn Street has always been the mailing address. Mr. Lodge confirmed yes.

Ms. Bouchard reaffirmed that the trigger for zoning relief was not due to either a universal review or a specific complaint.

Mr. Stebbins stated his concern that this determination could impact a lot of properties within the town.

Mr. Krumsiek stated his belief that the bylaw definition supported frontage on Colburn.

Mr. Krumsiek opened the hearing to the public for comment.

Hearing no comment, the ZBA proceeded to a motion.

On a motion by Mr. Stebbins which was seconded by Mr. Belcher, it was voted unanimously to overturn the determination of the Building Commissioner to apply legal frontage for the property located at 62 Colburn Street on Baker Street.

Address: 62 Colburn Street

Petitioner: Jacob Gadbois

Project: Application for Variance under § 4.5.3.3

Mr. Krumsiek read the legal notice into the record.

Mr. Gadbois verbally requested to withdraw the application without prejudice.

On a motion by Mr. Stebbins which was seconded by Mr. Belcher, it was voted unanimously to withdraw the variance application for 62 Colburn Street without prejudice.

Address: 115 Pond Street

Petitioner: Mark Luhtanen & Wendy Weitzner

Project: Application for Special Permit under § 4.5.3.2.3

Mr. Krumsiek read the legal notice into the record.

Mark Luhtanen and Wendy Weitzner, homeowners and applicants, introduced the proposal with their contractor, Antonio DaSilva. Mr. Luhtanen described the proposal to construct a sunroom on the rear of the home that extends 4 feet into the rear setback. Ms. Weitzner stated that it was specifically sized to avoid requiring a variance per the bylaw.

Mr. Krumsiek asked if the addition would be unheated. Mr. DaSilva responded that it would have a portable heating unit but not be tied into the existing heating and cooling system. He stated the sunroom would have glass windows and doors in a gable style room. As a wall mounted addition, it would have no permanent siding or structure. He showed the Board photos of similar installations.

Mr. Belcher described the relevant Bylaw Section 4.5.3.3 and inquired how the sunroom would qualify as a decorative feature.

Ms. Loughnane reviewed the history of the bylaw and its requirements to allow an encroachment into a setback by less than 4 feet only if the decorative element is de minimis in nature. She stated her belief that the Building Commissioner has interpreted the bylaw to mean unlivable space, which might satisfy questions regarding the heat source.

Mr. Belcher stated that he felt the pictures submitted by the applicant gave the appearance of living space. He stated that he did not view the proposed sunroom as the porch, portico or overhang that the bylaw allowed special permits for.

Ms. Weitzner asked if it was due to the heating unit in the proposed sunroom. Mr. Belcher responded that the Bylaw directs consideration of whether the proposed alteration comprised a decorative feature, not specifically heating. A porch is a decorative feature, whereas the proposed sunroom photos show couches, televisions and rugs. Mr. Belcher questioned if that was the type of alteration intended by the Bylaw.

Mr. Belcher stated that special permits were intended to be available under the Bylaw for homeowners to make visual improvements. He stated that this proposal did not seem to be what was contemplated when the Bylaw was written.

Mr. Krumsiek opened the hearing to the public for comment.

Mr. Charles Hughes, 10 Westview Terrace, stated his objection to the proposal, citing the house size relative to lot size and the sunroom's proximity to the lot line.

Mr. Krumsiek stated that the new bylaw section requires a determination that the proposed addition be a decorative feature and he did not believe the Board could grant the relief. Mr. Belcher agreed that the Board could not consider the special permit as it did not meet the decorative element criteria.

On a motion by Mr. Stebbins which was seconded by Mr. Belcher, it was voted unanimously to deny the application for a special permit for 115 Pond Street.

Address: 150 Porter Street

Petitioner: Susan Saliba and Toni Choueiri

Project: Application for Special Permit under § 4.1.3.3 and §8.2

Mr. Krumsiek read the legal notice into the record.

Susan Saliba, introduced the proposal to construct a single family home with an accessory apartment. She introduced John Bruno, contractor

Mr. Krumsiek asked if the entire proposal is new construction. Mr. Bruno confirmed that it was. Mr. Krumsiek asked if the plans meet all the Bylaw requirements for an accessory apartment. Mr. Bruno confirmed that the accessory apartment as proposed would be under 900 square feet in size, offers two means of egress and is within the dimensional requirements.

Ms. Saliba submitted three letters of support from abutters.

Mr. Stebbins asked if the square footage calculation included the porch. Mr. Bruno said that it did not, as the porch is not enclosed. He stated that it serves as a means of egress.

Mr. Stebbins inquired about the driveway and the home's proximity to the street. Mr. Bruno stated that the house will be set back 85 feet from the road with a 3 car garage.

Mr. Belcher reminded the applicant of the bylaw's requirement to install screening for more than 4 parking spaces. Mr. Bruno responded that the lot has many trees but that evergreens could be included in landscaping.

Mr. Krumsiek opened the hearing to the public for comment.

Hearing no comment, the Board proceeded to a vote.

On a motion by Mr. Stebbins which was seconded by Mr. Belcher, it was voted unanimously to approve the special permit application for 150 Porter Street including conditions by the Board of Health.

Address: 46 Washington Street

Petitioner: WB Realty Trust

Project: Application for Special Permit under § 4.1.3.3 and §8.2

Mr. Luke Legere, attorney representing the applicant, introduced himself, WB Realty Trust principals Al & Ruth Wisialko, and Ned Richardson. Mr. Legere reviewed a brief history of the proposal and addressed changes that have been made to the proposal in response to ZBA concerns and abutter concerns expressed since the hearing opened. Mr. Legere stated that the most recent changes submitted to the Board included the addition of dormers and a heightened roofline over the garages and complete removal of the accessory barn, which is no longer part of the proposal. Mr. Legere stated that the proposal is appropriate for the neighborhood and lot. He described the proposed two family dwelling and appropriately sized for a large lot, satisfying all setbacks, and designed consistently with the diverse character of the neighborhood.

Mr. Richardson, attorney for the applicant, summarized the compliance of the proposal with the Bylaw. He stated that the criteria described in Section 8.1 of the Bylaw is not required under the applicable section to this proposal (Section 8.2). He stated there is no requirement for the proposal to resemble a single family structure. He further summarized the design changes that have been made to the proposal since the hearing opened and stated his belief that the proposal clearly meets all criteria for a special permit under the Bylaw.

Mr. Legere discussed the ongoing concern of aesthetic review relative to the proposal, and stated that the Bylaw (Section 10.3.3.4) directs the board to consider neighborhood character, aesthetics, and social structures relative to the award of special permits. He stated that the neighborhood is generally diverse with multiple multifamily homes, institutional properties such as churches, businesses, and residential. He described the neighborhood as offering a variety of uses and lot sizes and shapes. He described the efforts of the architect (and referenced a letter submitted by the architect) to design the home in a style that would fit the neighborhood. He stated that the proposal satisfies Bylaw requirements, is consistent with neighborhood in design and style, and has incorporated comments from neighbors and the Board.

Mr. Stebbins asked if the existing barn would be removed. Mr. Legere confirmed that it must be removed to build the proposed residences.

Mr. Belcher asked for Mr. Legere's interpretation of how to objectively measure aesthetics. Mr. Legere responded that he is concerned with how courts interpret aesthetics in a neighborhood context. He stated that a special permit granting authority may consider aesthetics if that is part of the Bylaw. He further stated that a review of the matter would consider the context of how aesthetics are used in the Bylaw. He stated that the Board must consider the impacts of the proposal to the neighborhood, since that is what Westwood's Zoning Bylaw states. Mr. Legere described the General Residence district as diverse with many uses, and asked if the proposed design is completely out of line from what is there.

Mr. Legere stated that the Board cannot subject a personal view of aesthetics as grounds for denial.

Mr. Krumsiek opened the hearing to the public for comment.

Richard Fraser, 25 Lull Street, asked if the applicants intended to construct the barn at a later date. Mr. Legere responded that eventually it would be the owner's right to consider installation of a garage or barn. If at that time, doing so would require zoning relief, they will come before the Board, and if it could be constructed by right, that is permissible.

Mr. Krumsiek stated that the Board could condition an approval on the applicant not building the barn in the future. Mr. Legere responded that the Board could do so, but his clients could challenge the condition in court. He stated that in his experience, conditioning a future by-right use would not be supported by the court.

Mr. Kevin Chase, 52 Washington Street, expressed concerns regarding the proposal, including potential commercial uses related to the barn and increased height on the new residential design.

Mr. Legere stated that the proposed building is height compliant.

Ms. Bouchard confirmed that the Building Commissioner found the revised proposal to be compliant with height requirements set forth in the Bylaw.

Ms. Sarah Larch, 14 Loring Street, expressed concerns regarding the proposal, including the future of the barn and aesthetics of a two family home.

Mr. Legere responded that the neighborhood contains two family and multifamily homes, and the proposal is within the requirements set forth in the Bylaw. He stated that the applicants could construct by right a much larger single family home than what is proposed.

Mr. Steve Larch stated his concern regarding commercial uses in a barn.

Ms. Louise Fox, 17 Loring Street, sought to clarify restrictions regarding vehicle storage and parking.

Ms. Loughnane explained Bylaw Section 6.3.3.5, which requires screening of parking. Mr. Krumsiek described the existing mechanisms for zoning enforcement.

Brenda Fraser, 25 Lull Street, asked about fencing around the perimeter of the property.

Mr. Legere described the plantings and screening indicated on the current site plan.

Mr. Krumsiek closed the hearing to public comment.

Mr. Stebbins stated that the revised plans are an improvement.

Mr. Krumsiek discussed conditional approval relative to restriction on future accessory structures.

Ms. Loughnane stated her belief that the Board should exercise caution in conditional approvals. She stated the Board is at risk for an appeal if a condition does not relate specifically to criteria in Bylaw Section 8.2.

Mr. Stebbins suggested a motion to approve a two family dwelling under 4.1.3.3 and 8.2 with a condition that the fence and plantings reflect the current plan submitted to board and that any accessory structure to be built on the property under 8.2 or 10.3.3 must go back before the Board for a special permit.

Ms. Loughnane stated that conditions must be necessary to the granting of the special permit.

Mr. Belcher suggested that the Board's relevant finding would be that any accessory structures would compromise aesthetic character of the structure that has been submitted to Board for approval. Ms. Loughnane asked if that is more so for a two-family residence, as that is the required finding. Mr. Belcher stated that conditioning against an accessory structure further distinguish this two family from neighboring properties.

Mr. Stebbins asked the applicant if the condition was agreeable. Mr. Legere stated that the applicants would not agree to a condition that limits by right uses in the future.

Mr. Richard Beauregard, 61 Lull Street, asked if the Board would consider limiting future accessory structures to two stories.

Mr. Krumsiek stated that was possible.

Mr. Belcher stated that the Board's scrutiny should be limited to the application before it. He stated his belief that if the barn had not been included in the initial plan (which had since been withdrawn), it would not require a special permit so long as it was built within the height and setback limits. He further stated that he could support an effort to relate the condition to the concern over aesthetics expressed by the Board and abutters.

The Board moved to a vote.

On a motion by Mr. Stebbins which was seconded by Mr. Belcher, it was voted unanimously to approve a special permit under 4.1.3.3 and 8.2 for 46 Washington Street subject to the following conditions: 1) plantings and fencing must be consistent with the last plan submitted, and 2) Given size of lot relative to adjacent lot, number of abutters and size of the proposed structure, any accessory structure taller than 15 average feet in height must come back before the Board for a modification to the special permit.

Vote to Approve Minutes

On a motion by Mr. Stebbins which was seconded by Mr. Belcher, it was voted unanimously to approve the minutes for the meeting held on June 21, 2017.

On a motion by Mr. Stebbins which was seconded by Mr. Belcher, it was voted unanimously to approve the minutes for the meeting held on July 19, 2017.

Vote to Adjourn

On a motion by Mr. Stebbins which was seconded by Mr. Belcher, it was voted unanimously to adjourn the hearing.

The hearing adjourned at 9:47 PM.

List of Documents:

90 Canton Street
• Zoning Board application; plans and associated attachments
• Request for Continuance
247 Station Drive

- Zoning Board applications; plans and associated attachments

26 Parker Street

- Zoning Board applications; plans and associated attachments

62 Colburn Street variance and appeal

- Zoning Board applications; plans and associated attachments

115 Pond Street

- Zoning Board applications; plans and associated attachments

150 Porter Street

- Zoning Board applications; plans and associated attachments

46 Washington Street

- Zoning Board application; plans and associated attachments