

**Town of Westwood**

**Zoning Board of Appeals**

**Remote Participation, Zoom Video Conference Call**

**Meeting Minutes – March 16, 2022**

**Members Present:** Chairman John Lally, Linda Walsh, Sean Coffey

**Staff Members Present:** Director of Community & Economic Development Nora Loughnane

The meeting was called to order by Ch. Lally at 7:12 PM. Ch. Lally apologized for difficulties in logging onto to this remote meeting. He gave a brief description of the proceedings, including a description of instruction for remote participation by the public. All those present for the meeting who anticipated giving testimony were sworn in.

**Applications**

**Address: 31 Abbey Road**

**Petitioner: Dan Green of Westwood Green LLC**

**Project: Application to amend a Special Permit granted pursuant to Section §4.1.7.4 [Other Uses; Temporary]**

Ch. Lally stated that this was a public hearing to consider an application filed by Westwood Green LLC, on behalf of property owners William Murray and Lisa Murray, to amend a Special Permit previously granted by the Board on February 28, 2020 pursuant to the Westwood Zoning Bylaw Section §4.1.7.4 [Other Uses; Temporary]. He noted that the Special Permit was previously extended by the Board on February 24, 2021, and that the applicant has now requested an extension of the temporary use by an additional year. The property is located in the SRC (Single Residence C) zoning district.

Mr. Green explained that the existing Special Permit allows the temporary use of a townhome in the Homes at 45 development to be utilized as a design studio and sales office. Mr. Green stated that he expects all of the homes within the development to be sold before the end of the year, and expects to turn over the property that is currently being used as a temporary sales office to the owners in September or October 2022.

Ch. Lally asked if there were any comments from participating abutters. Ms. Loughnane stated that there were no raised hands among the attendees and no comments in the Question & Answer queue. Ch. Lally declared the hearing closed.

*Ms. Walsh moved that the Westwood Zoning Board of Appeals grant the Petitioner's request to extend the Section §4.1.7.4 Special Permit thru February 28, 2023, without opportunity for further extension. The Motion was seconded by Mr. Coffey. Ch. Lally called a roll call vote; the Board voted unanimously via roll call to grant the Petitioner's request to extend the Section §4.1.7.4 Special Permit.*

**Address: 315 University Avenue**

**Petitioner: Skye Enterprises LLC**

**Project: Application for Special Permit pursuant to Westwood Zoning Bylaw Section §4.5.2.2 [Special Permit Required for Alteration to Nonconforming Use]**

Ch. Lally read the legal notice into the record. He stated that this was a public hearing to consider an application filed by Skye Enterprises LLC for a Special Permit pursuant to Westwood Zoning Bylaw Section §4.5.2.2 [Special Permit Required for Alteration to Nonconforming Use]. He said that the Petitioner is seeking an expansion of an existing Medical Center use within a building that was granted a Special Permit for said use on May 16, 2018. The property is located in the Industrial (I) zoning district.

Ryan Welter appeared before the Board to explain his Petition. He explained that Tristan Medical Enterprises (d/b/a Regeneris Medical) opened a Medical Center on the second floor of 315 University Avenue in 2018. He stated that the ZBA's 2018 Special Permit authorized the "premises" to be utilized by this business, and he thought that would allow him to expand to the first floor without further approval. However, Building Commissioner Joe Doyle told him that a Zoning Bylaw change in 2021 led to the Medical Center use becoming a legally preexisting nonconforming use at this location. He said that Mr. Doyle told him that the proposed renovations and use of the first floor would result in an expansion of the nonconformity and would require a Special Permit to be issued by the Board for an alteration to the nonconforming use.

Ch. Lally asked Mr. Coffey if he had any comments or questions for the Petitioner. Mr. Coffey asked if there had previously been another Medical Center tenant on the first floor. Dr. Welter replied that Tristan Medical held the lease for the entire building but had not built-out or occupied the first floor. He said that he was now interested in renovating and using a portion of the first floor, but that he would like permission to use the entire building for his business at some point in the future. Ms. Loughnane explained that the submitted Building Permit application only calls for the renovation and use of a 7,500 SF section of the first floor.

Ch. Lally asked Ms. Walsh if she had any comments or questions. Ms. Walsh asked for a clarification of what the Board was being asked to do. Ms. Loughnane explained that a Special Permit was granted in 2018 to allow a Medical Center use of the entire building, but since Regeneris only constructed and operated a Medical Center on the second floor within the two-year effective timeframe of the 2018 Special Permit, rights under that Special Permit to utilize the first floor as a Medical Center were forfeited. She said that since the Zoning Bylaw changes in 2021 made the Medical Center use a legally preexisting nonconforming use at this location, Dr. Welter is requesting a new Special Permit allowing for an expansion of that legally preexisting nonconforming use to include some portion of the first floor. Dr. Welter said that he is requesting a Special Permit to allow the Medical Center use on the entire first floor. Ms. Loughnane said that the Board could grant the Special Permit to allow for the expansion to include the entire first floor, but if Dr. Welter only renovates and uses 7,500 SF on the first floor within two years of the issuance of this Special Permit, then he would have to return to the Board at some point in the future in order to request yet another Special Permit for further expansion on the first floor. Dr. Welter said that he understood.

Ms. Loughnane noted that the proposed expansion of the Medical Center use also requires an Administrative Environmental Impact & Design Review (EIDR) Approval by the Town Planner. She said that approval was granted by the Town Planner, with conditions, on January 21, 2022.

Ch. Lally asked if there were any comments from participating abutters. Ms. Loughnane stated that there were no raised hands among the attendees and no comments in the Question & Answer queue. Ch. Lally declared the hearing closed.

*Ch. Lally moved that the Westwood Zoning Board of Appeals grant the Petitioner's request for a Special Permit pursuant to Westwood Zoning Bylaw Section §4.5.2.2 to expand the preexisting nonconforming*

*Medical Center use to the first floor of the building, in conformity with the submitted plans, with the condition that a new Special Permit shall be required for any expansion of the legally preexisting nonconforming Medical Center which is not constructed and in operation within two years of the effective date of this Special Permit, and with the condition that the Project be in full conformance with all conditions of any other town approvals for the property. The Motion was seconded by Mr. Coffey. Ch. Lally called a roll call vote; the Board voted unanimously via roll call to grant the Petitioner's request for a Section §4.5.2.2 Special Permit.*

**Address: 115 Greenacre Road**

**Petitioners: Kyle and Crosby Piche**

**Project: Application for a Special Permit pursuant to Westwood Zoning Bylaw Section §4.5.3.2.3 [Construction of an overhang, porch, portico]**

Ch. Lally read the legal notice into the record. He stated that this was a public hearing to consider an application filed by property owners Kyle and Crosby Piche for a Special Permit pursuant to Westwood Zoning Bylaw Section §4.5.3.2.3 [Construction of an overhang, porch, portico]. He said that the Petitioner proposes to construct a portico on a new residential structure which replaces a previous nonconforming structure, where said portico would extend 4 feet into the nonconforming front setback. The property is located in the Single Residential C (SRC) zoning district.

Attorney Mike Terry appeared before the Board. He explained that his clients are proposing the construction of a new home on the property, which will be set further back from the front lot line than the existing nonconforming structure, except for the portico. Mr. Terry walked the Board through the project plans showing the proposed portico that would extend 4 feet into the nonconforming front setback.

Ch. Lally asked Ms. Walsh if she had any questions or comments. Ms. Walsh asked if the previous home received a Special Permit. Mr. Terry responded that the previous home was a preexisting nonconforming structure and had not received a Special Permit. He noted that the new home will be fully conforming with setbacks except for the proposed portico for which the Special Permit is being requested.

Ch. Lally asked if there were any comments from participating abutters. Ms. Loughnane stated that there were no raised hands among the attendees and no comments in the Question & Answer queue. Ch. Lally declared the hearing closed.

*Mr. Coffey moved that the Westwood Zoning Board of Appeals grant the Petitioner's request for a Section §4.5.3.2.3 Special Permit to permit the construction of a portico extending four feet (4') into the front setback area. The Motion was seconded by Ms. Walsh. Ch. Lally called a roll call vote; the Board voted unanimously via roll call to grant the Petitioner's request for a Section §4.5.3.2.3 Special Permit.*

**Address: 55 Webster Street**

**Petitioners: Stefanie Giuliano Abhar and Zabiul Abhar**

**Project: Application for a Special Permit pursuant to Westwood Zoning Bylaw Section §4.5.3.2.3 [Construction of an overhang, porch, portico] and for a Variance pursuant to Sections §4.5.3.3 [Variance Required for New or Expansion of Nonconformity] and §10.4 [Variances]**

Ch. Lally read the legal notice into the record. He stated that this was a public hearing to consider an application filed by Stefanie Giuliano Abhar and Zabiul Abhar, for a Special Permit pursuant to

Westwood Zoning Bylaw Section §4.5.3.2.3 [Construction of an overhang, porch, portico] and for a Variance pursuant to Sections §4.5.3.3 [Variance Required for New or Expansion of Nonconformity] and §10.4 [Variances]. He explained that the existing house has a nonconforming front setback of approximately 24' where 25' is required and that the Petitioners are proposing to construct a new 3.5' covered front porch which will encroach further into the front setback. Ch. Lally explained that the Petitioners are also proposing to construct an addition to the existing structure, including a garage with upper story living area, which will have a north side setback of 14.7' where 15' is required and where the existing structure's north side setback is compliant at 15.2'. He stated that the lot is nonconforming due to a lack of frontage, width, and area. The property is located in the Single Residential A (SRA) zoning district.

Stefanie Giuliano Abhar and Zabiul Abhar appeared before the Board. Ms. Giuliano Abhar explained that the proposed expansion is needed to meet the needs of her growing family. She stated that she is looking to add an additional bedroom, bathroom, family room, garage expansion, and front farmer's porch. She explained that the existing placement of the house on the lot caused challenges with the design of the addition. Ms. Giuliano Abhar said that they are hoping to add a second story over the existing garage and to pull the garage forward in order to fit their SUV inside the garage. She explained that the house does not sit squarely on the lot and said that the garage expansion, due to the angle of the house on the lot, causes an encroachment into the setback. Ms. Giuliano Abhar said that she and her husband had spoken to several neighbors, all of whom support their proposal.

Ch. Lally explained that in order for the Board to consider a Variance, the Petitioner will have to demonstrate that there is something unique about the property pertaining to soils, shape or topography, compared to other lots within the zoning district, that prevents strict conformance with the requirements of the Zoning Bylaw. Ms. Giuliano Abhar responded that she believes the curve in the street and angled placement of the home on the lot makes it unique and eligible for a Variance. She noted that the proposed incursion into the setback that requires a Variance is just a matter of 5 inches.

Ms. Walsh noted that the site plan had been hand-drawn and asked when the survey was developed. Ms. Loughnane responded that the survey is recent but not fully compliant with the Board's regulations. Ch. Lally asked if a new survey was needed. Ms. Loughnane replied that the Board would have to decide whether or not to waive its regulations pertaining to survey requirements in order to accept the submitted survey. She noted that the non-compliant survey was accepted by the prior Housing & Zoning Agent despite the lack of the owners' names and a missing measurement showing the existing building setback.

Ms. Giuliano Abhar displayed a survey for a prior project which includes the existing building setback. She explained that looking at the two surveys together will give the Board a better understanding of what she is requesting.

Ms. Walsh said that she would not accept the submitted survey and will require a compliant survey before considering the requested Variance and Special Permit. She questioned whether the Board could accept a hand-drawn survey. Ms. Loughnane pointed the Board to the section of its Regulations pertaining to site plan requirements and noted that nothing in the Regulations requires site plans to be machine-drawn.

Ch. Lally asked Mr. Coffey if he had any questions for the Petitioners. He asked if the addition of the farmer's porch was the impetus for the incursion into the front yard. Ms. Giuliano stated that the project design started with the expansion of the garage to accommodate the SUV, and that the farmer's

porch came later. Mr. Coffey asked if the garage could be pushed back to meet the setback requirement. Ms. Giuliano Abhar stated that they would have to push the garage back 3' in order to avoid any encroachment into the side yard setback. She said that such changes would push the proposed addition 3 feet further into the back yard, would require relocating a bathroom, and would significantly increase costs. Mr. Coffey suggested that the Petitioners take another look at their project design to see if they can make changes that will result in a design that does not require a Variance. Ms. Giuliano Abhar responded that she would prefer to move forward with the Variance request for the Project as designed.

Ch. Lally asked the Board members if they had enough information to consider whether the Petitioner has met the standards needed for the grant of a Variance. Ms. Walsh said that she did not feel she could vote in favor of a Variance at this time. She agreed with Mr. Coffey that the Petitioners should reconsider their design. Ms. Walsh also reiterated her concerns with the hand-drawn site plan. Ch. Lally said that he understood the Board members' concerns and thought a continuance would be appropriate.

Ms. Giuliano Abhar said that she was aware of the proposed Zoning Bylaw Amendment that is scheduled to be considered by Town Meeting which would allow for the consideration of minor expansions of nonconforming structures under a Special Permit rather than a Variance. Ms. Loughnane explained that if Town Meeting adopts the proposed Zoning Bylaw amendment and the Attorney General's Office approves the proposed amendments, and if the Building Commissioner then determines that the Petitioners' plans constitute a minor expansion of a nonconforming structure, then the Board could consider a Special Permit for the Project at a meeting in the fall.

*Ch. Lally moved that the Westwood Zoning Board of Appeals continue the public hearing to the Board's April 27, 2022 remote meeting to allow the Petitioner sufficient time to obtain a compliant site plan and to consider changes to the Project to eliminate the need for a Variance. The Motion was seconded by Ms. Walsh. Ch. Lally called a roll call vote; the Board voted unanimously via roll call to continue the public hearing to its April 27, 2022 meeting via Zoom.*

**Address: 461 Sandy Valley**

**Petitioner: David Picazio**

**Project: Application to amend the Special Permit issued by the Zoning Board of Appeals following a public hearing on July 21, 2021, for which a Decision was recorded in the Office of the Town Clerk on August 3, 2021**

Ch. Lally stated that this was a continuation of the public hearing that was opened on February 16<sup>th</sup>. Ms. Loughnane stated that the Petitioners had requested changes to a previously issued Special Permit to modify a condition regarding landscape screening of the installed solar array. She reminded Board members that, after discussion at the February 16<sup>th</sup> hearing session, the Petitioner was directed to meet with the Building Commissioner to discuss an appropriate form of temporary screening with Mr. Doyle. She noted that the Petitioner did meet with Mr. Doyle and that Mr. Doyle accepted the Petitioner's screening proposal and directed the Petitioner to provide a plan showing the proposed screening and return to the Board for final approval. In the meantime, Mr. Doyle allowed the final inspection of the solar array and granted permission for the solar array to be energized.

Ms. Loughnane stated that she then asked the Petitioner to either upload the screening plans to the Application portal for the Board's consideration of the requested Special Permit amendment, or withdraw the requested amendment if it was no longer needed, but they did neither. In light of the

Petitioner's failure to respond to these requests, and failure of both Mr. David Picazio and Mr. Wierzbinski to attend this hearing session, Ms. Loughnane suggested that the Board consider denying the Petitioner's request for an amendment of the previously issued Special Permit.

Ch. Lally asked Ms. Walsh and Ms. Coffey if they had any questions. Ms. Walsh asked if the Board could withdraw the Petition. Ms. Loughnane said that the Petitioner could have requested permission to withdraw, but since he did not, she recommended denial of the Petition.

Ch. Lally asked if there were any comments from participating abutters. Ms. Loughnane stated that there were no raised hands among the attendees and no comments in the Question & Answer queue. Ch. Lally declared the hearing closed.

*Ch. Lally moved that the Westwood Zoning Board of Appeals deny the Petitioner's request for an amendment of the Special Permit. The Motion was seconded by Mr. Coffey. Ch. Lally called a roll call vote; the Board voted unanimously via roll call to deny the Petitioner's request for an amendment of the Special Permit.*

### **Minutes**

Ms. Loughnane stated that the agenda calls for consideration of minutes from meetings on October 20, 2021, December 15, 2021, January 19, 2022, and February 16, 2022. She stated that the prior Housing & Zoning Agent had not accurately drafted all of these minutes and that she needed more time to properly prepare the minutes for the Board's review. Ms. Loughnane suggested that the Board consider these minutes at its next meeting in April.

### **Vote to Adjourn Hearing**

On a motion by Ch. Lally, seconded by Ms. Walsh, the Committee voted unanimously on a roll call vote to adjourn the meeting at 8:28 PM.

### **List of Documents:**

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| <p>31 Abbey Road</p> <ul style="list-style-type: none"><li>• Zoning Board Application, and Plans</li></ul> <p>315 University Avenue</p> <ul style="list-style-type: none"><li>• Zoning Board Application, and Plans</li></ul> <p>115 Greenacre Road</p> <ul style="list-style-type: none"><li>• Zoning Board Application, and Plans</li></ul> <p>55 Webster Street</p> <ul style="list-style-type: none"><li>• Zoning Board Application, and Plans</li></ul> <p>461 Sandy Valley Road</p> <ul style="list-style-type: none"><li>• Zoning Board Application, and Plans</li></ul> |
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