

Zoning Board of Appeals
Remote Participation, Zoom Video Conference Call
Meeting Minutes –November 15, 2023

Members present: Chair John Lally, Michael McCusker and Linda Walsh

Staff Members Present: Zoning and Licensing Agent Karyn Flynn

The meeting was called to order by Chair John Lally at 7:00 pm. Ch. Lally gave a brief description of the proceedings, including a description of instructions for remote participation by the public. All those present for the meeting who anticipated giving testimony were sworn in.

Chairman Lally made an announcement that Board was going to take an application out of order from the published meeting agenda, since the applicant for 16 Chamberlain Avenue had requested to withdraw their application without prejudice.

Address: 16 Chamberlain Avenue

Petitioner: Heidi Rodriguez

Project: Special Permit pursuant to the Westwood Zoning Bylaw Section §6.3.10. The petitioner proposes to construct a retaining wall to the rear and side of the property. The wall is shown to be 8' from the low side grade to the top at its highest point. The portion of the wall on the south side of the property is located 2.2' from the side lot line. At the rear, the wall is consistently located 3.3' from the lot line. The proposed 3' high fence/guardrail at the top of the wall is not considered when calculating the height as it is a building code required item, as there will be a drop of more than 30" within 36" of a walking surface. The property located in the Single Residential C (SRC) zoning district.

Ch. Lally stated the applicant Heidi Rodriguez has requested to withdraw the application without prejudice.

Ms. Walsh moved that the Westwood Zoning Board of Appeals grant the application withdrawal without prejudice for 16 Chamberlain Avenue. The Motion was seconded by Mr. McCusker. Ch. Lally called a roll call vote; the Board voted unanimously via roll call to grant the request for withdrawal without prejudice for 16 Chamberlain Avenue.

Address: Nahatan Street Map 29 Lot 206

Petitioner: 405 Nahatan Street, LLC

Project: Variance pursuant to the Westwood Zoning Bylaw Section §5.2 [Table of Dimensional Requirements] of the Westwood Zoning Bylaw. The newly created lot is lacking in Minimum Non-Wetland Area. The required minimum Non-Wetland Area is 60,000 sq. ft., and the proposed lot has 48,959 sq. ft. The lot was created by an Approval Not Required (ANR) plan in September 2022. The lot is currently vacant and does not have an assigned street address. The property is located in the SRE (Single Residential E) zoning district.

Since the application had been continued twice, Ch. Lally read the public hearing notice into the record again and asked if the applicant was in attendance. Ms. Flynn stated the Petitioners Attorney Dave Krumsiek is present. Ch. Lally asked Mr. Krumsiek to the application to the Board.

Mr. Krumsiek introduced himself as the attorney representing the property owner. He stated that the Petitioner is seeking relief from Westwood Zoning Bylaw section 5.2.5 relative to the requirement of 60,000 square feet of contiguous non-Wetland area in single Residence E (SRE). Mr. Krumsiek stated that the subject property has 49,959 sq. feet of contiguous non-wetland area and that his client hopes to build a single-family home on the property within all the setbacks as depicted on the plan submitted with the application, labeled Exhibit 2. Mr. Krumsiek stated the home would be constructed comfortably within all setbacks and the only relief needed would be from the contiguous non-wetlands requirement. He said that he submitted a memorandum that indicated Massachusetts Appeals Courts has ruled that contiguous non-wetland area may be a subject of a Variance request. Mr. Krumsiek cites the 2010 case of Lamb vs. Taunton Zoning Board of Appeals, as being similar to his client's application with the location of the wetlands in the middle of the lot, the Petitioner needs a Variance to improve the property

Mr. Krumsiek stated the standards for a Variance involve three statutory criteria, and that the first typically being the most difficult to meet, a uniqueness of the lot related to the soil, shape or topography. Mr. Krumsiek stated that this lot is unique

in that the soil and topography is different than that of the surrounding properties. He stated that even though the surrounding lots have wetlands, they are much larger lots and don't have a disproportionate square footage of wetlands in the middle of the lot, as the subject property does. Mr. Krumsiek said the second criteria the Board must consider for a variance is that literal enforcement of the provisions of the bylaw would involve substantial hardship, financial or otherwise for the Petitioner. Mr. Krumsiek refers to legal case Spaulding vs. Zoning Board of Appeals in Leicester, stating the Massachusetts Appeals court ruled substantial hardship meeting the criteria exists where it is not economically feasible or likely that the property would be developed without a Variance. Mr. Krumsiek states that is the case with his client's application. He continued that under the bylaw, there are no other practical uses. The lot is too wet for any other practical use. Mr. Krumsiek stated that the Supreme judicial court has held that whether a lot of land is deemed non-buildable under the terms of the bylaw, as a factor for the Board to consider in determining hardship, as I have included in my memo citing Chater vs. Milton Board of Appeals. He said in this instance, strict application of the bylaw would preclude any development on the property and create a financial hardship for the Petitioner due to not being able to develop the property without the relief sought. Mr. Krumsiek stated the third and final criteria for a variance is whether the proposed variance can be granted without detriment to the public good and without nullifying the intents and purposes of the bylaw. He stated the most appropriate use for the land is a residential dwelling, which is an approved use in the zoning district. The proposed home is in harmony with the surrounding properties. I went through tax records of the surrounding homes and the surrounding homes are all roughly the same size as what my client is proposing, therefore there is no detriment to the public good. He stated that the second part is would substantially deviate from the intent or purpose of the bylaw. He said should the variance be granted the Petitioner would need to file a Notice of Intent with the Conservation Commission as the proposed project is within the 100-buffer zone, and obtain an Order of Conditions. He stated that the Conservation Commission will make sure that the Wetlands are protected. Mr. Krumsiek stated that his client did have a verbal agreement with the neighbor at 345 Nahatan street to purchase 12,000 square feet of non-wetlands land, and unfortunately that agreement did not go forward. He stated if it had, the proposed project would be able to go forward with Conservation Commission oversight. Mr. Krumsiek stated that with all things being said, he believes this project is eligible for a variance and hopes the Board will grant it.

Ch. Lally stated that Mr. Krumsiek's client was before the Planning Board in 2022 for an ANR plan to split a large lot into to smaller lots. Mr. Krumsiek said that was correct and the plan was submitted as exhibit 1. Ch. Lally stated that is written right on the plan that the newly created lot is non-buildable. Mr. Krumsiek agreed and said it is unbuildable with a variance. Ch. Lally stated that his client created the two lots of his own making. Mr. Krumsiek stated his client created the two lots because he had the agreement to purchase the land from the neighboring lot, but the neighbor threw him a curve ball. Ch. Lally asked what about the lot in particular makes it not the same as surrounding lots. Mr. Krumsiek said the other lots are much larger and have less wetlands. Ch. Lally stated all the surrounding lots contain wetlands, and Mr. Krumsiek agreed.

Ch. Lally then asked Mr. McCusker if he had any questions. Mr. McCusker asked Mr. Krumsiek go into a more detail about the variance request. Mr. Krumsiek stated the Petitioner is focusing on the soil conditions and large area of wetlands as the uniqueness to the lot. Mr. Krumsiek read the variance bylaw aloud and cited that they are focusing on the soil conditions on the lot. Mr. McCusker stated that the Petitioner has indicated the lot is smaller than the surrounding lots. Mr. Krumsiek stated that yes and that the lot doesn't have the uplands. Mr. McCusker stated his issue is that the lot is smaller due to an ANR plan enacted by his client. Mr. Krumsiek stated his client sought the ANR endorsement in contemplation of purchasing the 12,000 sq. feet of land form the neighbor. His client needs a variance because he could not get the 12,000 sq. feet.

Ch. Lally then asked Ms. Walsh if she had any questions. Ms. Walsh stated she wanted to hear public comment before asking any questions. Ch. Lally asked Ms. Flynn to open up the hearing to public comment. Ms. Flynn stated there are several hands raised in the attendees and questions in the Q& A. Ms. Flynn asked that all residents that wish to speak please state their name and address in the Q & A. Ms. Flynn stated the first resident was Francis Curran of 360 Nahatan Street. Mr. Curran again stated his name and address for the record. Mr. Curran stated that the contractor is trying to split the lot and then ask for a variance. He went into the land purchase with eyes wide open and has the other house on the market for 2.5 million. I think the financial hardship point is moot and he has concerns about water displacement on the lot with a potential new house being built. Mr. Krumsiek asked if he could respond and Ch. Lally said that he could. Mr. Krumsiek the hardship referred to is not being able to build on the land as outlined in the case law referred to earlier. He stated client is a developer and would like to make a profit from the existing house on the market and if approved would like to do the same on the lot in question. Mr. Krumsiek said the fact that he is looking to build and make a profit is not something that is trying to hide.

Ms. Flynn then noted a typed question in the Q& A from Scott Madel of 345 Nahatan Street. Mr. Madel stated that the wooded and wetland areas of Westwood drew them us to this community. They had purchased a lot next door, and we were told that there was an offer from the builder to purchase the adjacent property, but there was no agreement to sell. Since moving in they have seen the wildlife in the lot and are concerned about further subdividing land.

Ms. Flynn stated there were several more residents wanting to give comment. Claire Galkowski of 320 Dover Road who typed in the Q & A that the bylaws are in place for a reason, we need to protect our wetlands. It would set a bad precedent to override the bylaw. The next resident to give comment was Ellen Modi of 380 Nahatan Street. Ms. Modi stated that he chose to buy the lot and then split it.

Klaus Hoyer of 340 Nahatan Street stated the newly constructed house is already closer to the street than others on the street. The proposed house is not in character with the other houses near it and asked is there a way to authenticate the land deal. Ch. Lally confirmed the proposed house does meet setbacks and stated it is up to the Petitioner's attorney if he wants tot discuss the land deal further. Mr. Krumsiek stated that he was not involved in the deal and can only repeat what he was told, that there was no written agreement, and my client had no recourse when the other party backed out of the deal.

Victoria Makrides of 340 Nahatan Street. Ms. Makrides stated the new house is built close to the road and has experienced some flooding issues and any other construction there would do the same. She stated that the builder made some choices and now, it appears the house is not selling because it is out of character for the houses in this area and that she was against the variance.

Ch. Lally asked if there are any other people wanting to speak on this matter. Ms. Flynn stated that Nora Loughnane, Director of community and Economic Development for Westwood and the acting Town planner at the time of the ANR plan for the lots in question would like to speak.

Ms. Loughnane stated she wanted to make a couple of points, as she had provided her written comments to the Board and Applicant prior to the meeting. Ms. Loughnane stated in respect to uniqueness, several lots nearby have nearly identical conditions as the parent lot, of which this smaller lot was divided from. 244 and 255 Clapboardtree Street are very large parcels with the majority of the land being wet., both of those parcels have single family homes on very large parcels. 255 Clapboardtree Street is one lot away from the back of this property. Although both of those parcels have sufficient frontage to create additional lots. The owners have not done that, because they know that it would be creating an unbuildable lot that would not be would not meet the conditions of section 5.2 and 5.3 of the zoning bylaws. This lot was created with the understanding that it could not be developed in its current form and still meet the bylaw. It is like so many other lots throughout the SRE District, and specifically lots that are almost adjacent to this parcel. I don't see that the Board has any means to find this unique. The smaller lot that Mr. Musto created is not suitable for development and if that is to be considered a means of hardship, it's worth the Board keeping in mind that that hardship was fully self-created and the parcel would not be rendered unbuildable simply because the ZBA votes not to grant a variance, rather the parcel was non-buildable from the time it came into existence. It was created by ANR Plan that clearly states that the lot is an unbuildable lot.

Ms. Loughnane stated that she wanted to make a point regarding the potential sale with a neighbor. She stated she was working with the representative for that neighbor who developed an ANR plan. The purpose of the ANR plan was to determine the maximum number of lots that could be created out of the property they owned, to be able determine the value of the land. They were able to show that they could create 3 lots and learned that by selling a portion of the land to an abutter, they would lose one of those lots, bringing the value of their land down from 3 lots to 2 lots. Ms. Loughnane stated she was told by the representative, that the owner offered the land to Mr. Musto for the price of one buildable lot and that price was determined to be excessive by Mr. Musto. Ms. Loughnane stated that this information was second hand from the representative for the former property owner while they were going through negotiations. The purpose of the ANR Plan was to determine value and they chose to sell two lots and not have the three-lot subdivision go through in the end and that is why that ANR plan has never been recorded. Ms. Loughnane stated the most significant issue is the question of uniqueness, which is the Board's first test to determine whether a variance could be granted and she did not see this lot at all as being unique.

Mr. Madel of 345 Nahatan asked to give another comment. He stated that he provided some comments prior to the hearing and I think that in addition to that building more on this limited land creates additional challenges with runoff. We moved here recently from the city, and what drew us here from Westwood, where the wetlands and the wooded areas. He stated the you can drive a half block down the street and see the stark difference in with our neighbors in Norwood. If you're thinking about how this affects from a financial hardship perspective, every time we cut up and subdivide more land that is impacting the value of living in a community like Westwood, and not just for the people, but also for the wildlife.

Ch. Lally then asked Ms. Walsh if she had any questions. Ms. Walsh asked about the location of the proposed house on the lot and what protections would be taken to the resource area. Mr. Krumsiek stated Exhibit 2 shows the proposed location of the house with or without the purchasing additional land. As far as protections, the Conservation Commission would determine all measures. Ms. Walsh asked if the existing house had to go through Conservation. Mr. Krumsiek said he was not involved in that project. Ms. Flynn stated that it did go through Conservation and that there is an open Order of Conditions.

Ch. Lally asked if the Board had any further questions and they stated they did not. Ch. Lally declared the hearing closed. Ch. Lally stated that he did not find anything unique about the lot compared to the surrounding neighboring lots. The applicant created this nonconforming lot and I find it difficult to approve this application. Ch Lally asked Mr. McCusker if he would like to make a motion.

Mr. McCusker moved that the Westwood Zoning Board of Appeals deny the Variance for Map 29 Lot 206 pursuant to the Westwood Zoning Bylaw Section §5.2 [Table of Dimensional Requirements]. The Motion was seconded by Ms. Walsh. Ch. Lally called a roll call vote; the Board voted unanimously via roll call to deny the Variance for Map 29 Lot 206.

200 University Avenue

Petitioner: B2 Tech LLC d/b/a 5 Tool Performance

Project: Special Permit pursuant to the Westwood Zoning Bylaw Section §4.1.5.28. The petitioner proposes to operate an indoor baseball training center in an existing commercial building. The proposed Commercial Recreation, Indoor facility use is permitted by Special Permit from the Zoning Board of Appeals. The property is located in the Industrial (I) zoning district

Ch. Lally read the public hearing notice and asked if the applicant was in attendance. Ms. Flynn stated Peter Zahka the attorney for the business owner was trying to be in two places at once, attending two meetings. Ms. Flynn stated the business owner Natalie Chu is in the audience and prepared o speak should Mr. Zahka not be able to join. Ch. Lally stated that we could take on another agenda item to give Attorney Zahka more time.

Vote to Approve Meeting Minutes

Ch. Lally stated that the minutes for October 18, 2023 meeting were completed and ready for approval.

Mr. McCusker moved that the Westwood Zoning Board of Appeals approve the meeting minutes from the October 18, 2023 meeting. The Motion was seconded by Ms. Walsh. Ch. Lally called a roll call vote; the Board voted unanimously in favor to approve meeting minutes from the September 20, 2023 meetings.

Ch. Lally stated there was one other administrative matter that Ms. Flynn wanted to announce. Ms. Flynn stated that due to a Special Town meeting on January 17th the January ZBA meeting will be change to January 24, 2024. Ms. Flynn stated that the calendar has been revised on the website.

Ch. Lally asked if there was any other business before going back to the public hearing for 200 University Avenue. Ms. Flynn there was not.

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Ch. Lally read the public hearing notice earlier in the meeting. Ms. Flynn tried Attorney Zahka again and brought Ms. Chu back into the meeting to present her project. Ch. Lally asked that Ms. Chu introduce her project.

Ms. Chu stated that she is a small business owner looking to build out my second baseball facility. She said her first one was in Dedham, and the lease came to end so they looked to relocate and fell in love with the building located at 200 University Avenue. The owner Howard Schwartz has been very helpful and the building itself is broken up into 4 quadrants and they will focus on defense, pitching catching and hitting. Ms. Chu said they would be catering specifically to 7 to 8-year old's up to almost college level athletes. Stating the business' purpose is to take development in baseball to a higher level. Ms. Chu stated that she worked for corporate America for 18 years and learned how to run a business, and feels like the baseball business is quite chaotic. It's organized chaos, but it's not as organized as it can be. She stated that she thought we would take a stab at perfecting things and making it a little bit easier for families to navigate through the landscape.

Ch. Lally asked if the applicant was changing the footprint of the building. Ms. Chu stated the building is in great shape, and the only things they will be doing is new floors, nets and turf. Ch. Lally stated knows the applicant applied with the Planning Board and asked the applicant to discuss the parking on site and accommodate those staying and those dropping off. Ms. Chu stated they received EIDR approval with Town Planner, Elijah Romulus and he stated that we need to add two 15-minute drop off spaces with signage to indicate an area to drop of children and dash out, he also wanted us to have 6 designated employee parking spaces near the docks in the rear of the building.

Ch. Lally asked Ms. Walsh if she had any questions. Ms. Walsh asked what would be happening with the docks. Ms. Chu stated they would remain as they are, maybe paint them. Ms. Walsh asked if the Town Planner had stated if there was enough parking. Ms. Chu said she didn't know if he said that, but knows there are 26 spaces. Ms. Walsh asked what is the occupancy of the building. Ms. Chu stated 35. Ms. Flynn clarified the 35 number is the proposed number of employees and students, not the occupancy of the building. Ms. Flynn stated that Ms. Chu had already been in touch with the Building Commissioner regarding permits for the interior work of nets and flooring.

Ch. Lally asked Mr. McCusker if he had any questions. Mr. McCusker asked if Ms. Chu had any plans for any work outside the envelope of the building. Ms. Chu said that no she would not, there is landscaping and trees that have recently been put in. Mr. McCusker asked if there were any plans for baseball instruction outside the Building. Ms. Chu stated there was not. Ch. Lally asked that the conditions of the Planning Board conditions be included into the ZBA decision. Ch. Lally then asked Ms. Chu to speak to the safety measures her business will institute. Ms. Chu stated safety is a cornerstone if her business and she has hired the best contractor in the area for her project. She went on to state that many similar type businesses like to cram as many people in as possible, and that they are not like that. She said they were very vigilant on safety. Ch. Lally asked if the employees are trained on safety and do they have certifications. Ms. Chu stated that they were and stated that SafeSport is a certification that requires concussion awareness and CPR training.

Ch. Lally asked the Board members if they had any other questions. Ms. Walsh stated that she had concerns for safety parking lot and for pedestrians. She asked if there was any spill over parking should any future event need it. Ms. Chu stated the hours of operation was from 3:00pm to 9:00pm when most of the surrounding businesses would be leaving, should they find that they need more, they could secure more parking in the area. Ms. Chu said that in her experience, this is far more drop off and going to do errands or go across the street for shopping or a meal.

Ms. Flynn stated that a condition of the Town Planners decision requires the applicant submit a parking plan with the 15-minute parking spots and employee parking spots indicated. Ms. Walsh stated she pulled up the lot online and it looks like there are 28 spaces and the applicant indicated 35. Ms. Flynn stated that the number 35 was in relation to the employees and athletes on site. Ms. Chu stated there were 26 spots. Ch. Lally stated that both Police and Fire did not have any safety concerns. Ms. Flynn stated if there were any parking concerns, it would fall under the Building Commissioner and that the Building Commissioner and Town Planner both reviewed this application.

Ch. Lally asked Ms. Flynn to open up the hearing to public comment. Ms. Flynn stated there were no questions in the Q & A, and that Nora Loughnane has her hand raised to speak. Ms. Loughnane stated she would be speaking as the Director of

Community & Economic development and as a resident. An indoor commercial use does not have a specific number of parking spaces associated with it, rather it leaves it up to the Building Commissioner to make a determination. Commissioner Mike Perkins, has reviewed this and has determined that the proposed use has more than a sufficient amount of parking. Ms. Loughnane stated that the prior use that had been approved by the Planning Board for this property, which never came to fruition, did not have enough parking on site to meet its needs. The property owners also own two other parcels that are nearby and they had agreed to allow use of other parking lot across the street on the same side of University Avenue. I'm sure if it becomes a problem where the business is so successful that there's a need for more parking spaces. I'm sure the owners would consider that again. I have no concerns about parking.

Ms. Loughnane stated that she believed the use is both appropriate and compatible with the uses in the area and that it's terrific idea. This is a building has been vacant for approximately 8 years. I think it's great for the for the players, families and surrounding businesses. She stated there would be opportunities for parents to drop off and go shopping and go to restaurants in the area, so I think you will add vitality to the area as well. Ms. Loughnane said as the Economic Development Planner, I am thrilled to see this use coming in. And I very much hope that the Board grants this special permit to allow this use to go forward.

Ch. Lally asked if there was any other public comment. Ms. Flynn stated there was not. Ch. Lally asked Board members if they had any further question. Mr. McCusker s stated that he did not. Ms. Walsh stated that she did not, but wanted to let Ms. Chu know that she was 100% in favor of her project as a resident and as a mother, and thinks it's a great for Westwood and surrounding town. As a person that works in transportation and her own experiences with dropping of a child at gymnastics for years, she saw the mayhem in the parking lot and knowing there is the opportunity for overflow parking if needed is very reassuring. Ch. Lally declared the hearing closed.

Ms. Walsh moved that the Westwood Zoning Board of Appeals grant the special permit for 200 University Avenue pursuant to the Westwood Zoning Bylaw Section §4.1.5.28 [Commercial Recreation, Indoor]. The Motion was seconded by Mr. McCusker. Ch. Lally called a roll call vote; the Board voted unanimously via roll call grant the special permit for 200 University Avenue.

Vote to Adjourn Hearing

On a motion by Mr. McCusker, seconded by Ms. Walsh, the Board voted unanimously on a roll call vote to adjourn the meeting at 8:23 pm.

List of Documents:

- Nahatan Street Map 29 Lot 206 - Zoning Board application; plans and associated attachments
- 200 University Avenue-Zoning Board application; plans and associated attachments