



Minutes for Meeting

Zoning Board of Appeals, via Zoom

March 14, 2022 at 7:30 PM

Members present: Jane Fisher Carlson, Winifred I. Li, Natalie B. Sawyer

**100 Black Oak Road:** a hearing on a request by Beechtree Construction, LLC on behalf of Timothy Clifford requesting a variance for a pool house and squash courts.

The following members were present:

- Jane Fisher Carlson, Chair and Acting Secretary
- Winifred I. Li
- Natalie B. Sawyer

Documents in the record include:

- 100 Black Oak, Site Plan, Accessory Structure, prepared by Mass Architect, Nicholas Paolucci, AIA, 45 Woodmere Drive, Milton, Massachusetts, 8/17/21
- 100 Black Oak, Floor Plan, Accessory Structure, prepared by Mass Architect, Nicholas Paolucci, 8/17/21
- 100 Black Oak, Front & Rear Elevations, Accessory Structure, prepared by Mass Architect, Nicholas Paolucci, 8/17/21
- 100 Black Oak, Side Elevation Facing House, Accessory Structure, prepared by Mass Architect, Nicholas Paolucci, 8/17/21
- 100 Black Oak, Side Elevation Facing Woods, Accessory Structure, prepared by Mass Architect, Nicholas Paolucci, 8/17/21
- 100 Black Oak, Building Section, Accessory Structure, prepared by Mass Architect, Nicholas Paolucci, 8/17/21

- 100 Black Oak Road, Proposed Addition, prepared by Land Mapping, 10 Andrew Square, Suite 201B, South Boston, Massachusetts 02127, 12/1/21

The property in question, 100 Black Oak Road, Weston, Massachusetts (the “Premises”) is located in Single Family Residence District A. The lot and home conform to all required Town of Weston Zoning By-laws.

Neither Beechtree Construction, LLC, of 296 Washington Street, #147, Wellesley, Massachusetts (the “Petitioner”), represented by Jason Indelicato, the project contractor, nor Timothy Clifford, the owner of the Premises, appeared before the Board during the hearing. The Petitioner had notified the Town asking for an extension, but was informed that it would need to appear before the Board to request a continuation of the hearing.

An abutter, Marjorie Shapiro of 11 Middle Way, Weston, Massachusetts, appeared before the Board along with her son Joshua to express their concern with the petition. They were worried about the project’s potential for causing stormwater runoff and flooding on Ms. Shapiro’s property, since she has experienced these problems before.

The Board noted that, had the Petitioner appeared before them, they would have required more documentation than the Petitioner had submitted in order to consider the application. The Board noted that such missing materials included, but were not limited to, a plan from the Town’s GIS Maps Online site showing the properties neighboring the Premises, RGFA calculations stamped and certified by an architect, and height and other dimensions of the proposed structure on architect-certified elevations.

Following due and open deliberation, the Board, by unanimous decision, decided to deny the case without prejudice since the Petitioner was not in attendance. It was noted that the Petitioner could resubmit an application for a variance, with required documentation, at any time.

**154 Church Street:** a hearing on a request by Joan-Ellen Pichard regarding 154 Church Street (Map 18, Parcel 11) requesting a determination of the regulatory authority of Section V of the Weston Zoning Bylaw; a determination of limitation of regulatory authority under Section IX of the Weston Zoning Bylaw; nullification of 2003 Planning Board Certificate of Action, Site Plan Approval, Condition 12; determination of regulatory authority as Special Permit Granting authority for Section X.A of the Weston Zoning Bylaw; and a special permit for an accessory apartment.

The following members were present:

- Jane Fisher Carlson, Chair
- Winifred I. Li
- Natalie B. Sawyer, Acting Secretary

Documents in the record include:

- Site Plan, 154 Church Street, Snelling & Hamel Associates, Inc, 2/22/16
- Plan of Land, Snelling & Hamel Associates, Inc, 8/13/91
- Certificate of Action, Site Plan Approval with Conditions, 154 Church Street, 6/18/03
- Certificate of Action, Scenic Road Site Plan Approval Amendment, 154 Church Street, 12/1/21
- ZBA decision 6/24/04

The subject site, 154 Church Street, Weston, Massachusetts (the “Premises”), is in zoning District B and contains about 44,146 ft<sup>2</sup> of area in a district requiring 40,000 ft<sup>2</sup>. The property abuts Town land to the east, north, and northwest. The lot has both a barn and an accessory building located on it. The barn sets back only about 30 feet from Church Street (55 feet from the centerline) in a district requiring 50 ft and 75 ft respectively. Ms. Joan-Ellen Pichard, successor Trustee to the Thomas Jerman Tanner 2009 Trust, (the “Petitioner”) is seeking: (i) certain advisory determinations, as further described below; (ii) the “nullification” of a condition of a Certification of Action of the Planning Board; and (iii) a special permit to use the accessory building as an accessory apartment.

More specifically, and as set forth in the Application for Hearing, the Petitioner is requesting the following:

*Request #1:* A determination that the ZBA is the sole authority to determine and interpret Section V. Subsection 4 in the Town of Weston Zoning By-Law.

*Request #2:* A determination that the Planning Board’s authority is limited by Section IX.B of the Weston Zoning By-Law and the Planning Board cannot usurp the powers of the Zoning Board under this same section.

*Request #3:* Nullification of the portion of the Planning Board’s 2003 Certificate of Action, Site Plan Approval, prohibiting use of the accessory building as an accessory apartment.

*Request #4:* A determination that the ZBA is the sole Special Permit Granting Authority for the establishment of a use or a change of use as set forth in the Weston Zoning By-Law.

*Request #5:* A special permit to use the accessory building as an accessory apartment.

The hearing application lists Attorney M. Elizabeth Nolan, Nolan & Nolan Attorneys, as the representing attorney for the Petitioner. The Board brought up questions regarding this representation because Attorney M. Elizabeth Nolan was formerly the Weston Town Clerk and, in that capacity, certified the disputed Planning Board's Certificate of Action, Site Plan Approval in 2003 and the associated Variance/Special Permit decision in 2004. This potential conflict issue was brought to Attorney M. Elizabeth Nolan's attention prior to the March 14, 2022 hearing.

Attorney Robert Nolan, law partner and spouse of Attorney M. Elizabeth Nolan, appeared before the Board at the March 14, 2022 hearing, stating that he is now representing the Petitioner instead of Attorney M. Elizabeth Nolan. Attorney Robert Nolan stated that he spoke to the State Ethics Commission to confirm that the law does not prohibit the law partner of the former municipal employee from representing his client. The Board requested that Attorney Robert Nolan submit the informal input from the State Ethics Commission.

### Background

In 2003, the Premises was the subject of a Site Plan Application; seeking to rehabilitate a barn, converting it into a residence with a workshop and vehicle and storage bays in the basement, and to convert an accessory building into a one-story storage shed. Following an extended process, site plan approval was granted by the Planning Board on June 18, 2003 (the "2003 Certification of Action"); subject to numerous conditions, including that: "[t]he storage building shall be limited to interior storage of equipment and materials and shall be prohibited from use as a guest house, accessory apartment, dwelling, or place of human habitation." 2003 Certification of Action, Condition No. 12.

In 2021, the Petitioner filed an application to modify the 2003 Certificate of Action to allow the storage building to be used as an accessory apartment. On December 1, 2021, following a hearing, the application to modify was denied by the Planning Board after finding that there was "[no] substantive reasoning relating to the property conditions, changes in use, or changes in current conditions within the town to overturn the decision of a previous Planning Board.

Following the Planning Board's denial of the application to modify, the Petitioner filed the instant application, asking this Board to modify the 2003 Certificate of Action by "nullifying" Condition No. 12 (only) and issuing a special permit to allow the storage building to be used as an accessory apartment.

The Board noted that there is missing information from the hearing application such as:

- Floor Plan
- Certified RGFA calculations
- Certified building dimensions
- Drawings showing parking spaces
- Elevation drawings

The Board also noted that a representative from the Planning Board was not able to attend tonight nor was Town Counsel, so they decided to continue the hearing. The Board voted unanimously to continue the hearing until March 31, 2022 at 7:30 PM via Zoom.