



Minutes for Meeting

Zoning Board of Appeals, via Zoom

May 2, 2023 at 7:00 PM

Members present: Jane Fisher Carlson, Wendy Kaplan Armour, Laura Mintz, Winifred I. Li, Stephen J. Larocque

490 Concord Road: a continuation of a hearing on a request by **Nuong Bui** and **Hong Linh Ho Duc** requesting a special permit for an addition.

The following members were present:

- Jane Fisher Carlson, Chair and Acting Secretary
- Wendy Kaplan Armour
- Laura Mintz

Additional documents in the record include:

- 490 Concord Road, Proposed Site Plan, prepared by Snelling & Hamel Associates, 4/25/23
- 490 Concord Road, Architectural Drawing, prepared by Spruhan Engineering P.C., A-00, 5/1/23
- 490 Concord Road, Architectural Drawing, prepared by Spruhan Engineering P.C., A-01, 5/1/23
- 490 Concord Road, Architectural Drawing, prepared by Spruhan Engineering P.C., A-02, 5/1/23
- 490 Concord Road, Architectural Drawing, prepared by Spruhan Engineering P.C., A-03, 5/1/23
- 490 Concord Road, Architectural Drawing, prepared by Spruhan Engineering P.C., A-04, 5/1/23
- 490 Concord Road, Architectural Drawing, prepared by Spruhan Engineering P.C., A-05, 5/1/23

- 490 Concord Road, Architectural Drawing, prepared by Spruhan Engineering P.C., A-06, 5/1/23
- 490 Concord Road, Architectural Drawing, prepared by Spruhan Engineering P.C., A-07, 5/1/23
- 490 Concord Road, Architectural Drawing, prepared by Spruhan Engineering P.C., A-08, 5/1/23
- Letter from Scott and Catherine Niemann, 4/28/23
- Letter from Nu and Hong Linh, 4/28/23

The Petitioners Nuong Bui and Hong Linh Ho Duc appeared before the Board with their attorney Peter Covo of Wilchins, Cosentino & Novins of Boston, Massachusetts. The Petitioners had revised the plans from the last hearing to reduce the size of the deck on the second story of the house. The proposed deck was reduced in length by about 4 feet so that it would be no more non-conforming than the existing home. The existing home is 17.4 feet from the side lot line, and the proposed deck would be 17.7 feet from the side lot line.

The Board brought up the issue of the RGFA calculations on the drawings submitted. The Board noted that these calculations did not include the area of the existing garage. John Field, Weston's Building Inspector, confirmed that in fact garage area, even if it is below grade, should be included in the RGFA total.

The Petitioners explained to the Board that one reason they proposed to have the second story deck would be to help screen the view into their bedroom windows from the abutting property

Scott and Catherine Niemann of 484 Concord Road, Weston Massachusetts (the "Abutters") appeared before the Board to explain that they are still concerned with the size and location of the proposed second story deck because it would be close to their lot and in the Petitioners' side setback. They said that they had planted trees between their home and the Petitioners' dwelling, but that the trees would take several years to grow high enough to provide screening, particularly since the deck in question was on the second story.

Board members noted that they had hoped the proposed deck on the revised plan would have been smaller than the one presented. They reiterated that the currently-proposed deck still added significant mass in the setback, despite being farther from the lot line.

Peter Covo, attorney for the Petitioners, explained that the Abutters' newly constructed driveway was closer to the Petitioners' home than their original drive, and that car lights from

the drive shine into the Petitioners' bedroom windows. He suggested that the second story deck would help to shield some of those lights.

Following due and open deliberation, the Board voted unanimously to grant a special permit for the proposed 33.8' x 18.9' addition, shown on the Proposed Site Plan dated April 25, 2023 (the "Site Plan") and labeled "Proposed Addition," on the north side of the home. The Board determined that this addition would not be substantially more detrimental to the neighborhood than the existing non-conforming dwelling.

Following due and open deliberation, the Board voted unanimously to deny a special permit for the second-story deck (labeled "Proposed Deck with Pergola" on the Site Plan) without prejudice. The Board determined that the proposed deck would be more detrimental to the neighborhood than the preexisting nonconforming structure because of the unacceptable increase in mass within the setback on the dwelling's second story. The Board also voted unanimously to deny a special permit for the covered porch (labeled "Proposed Covered Porch" on the Site Plan) without prejudice. The Board determined that it was unable to resolve discrepancies regarding the dimensions of the proposed enclosed porch, as shown on the project's plans and elevations, without additional information.

61 Beaver Road: a hearing on a request by **Michael Nemrow**, on behalf of **61 Beaver Realty Trust** requesting a special permit/variance for a shed/carport and an appeal to the Building Inspector's decision.

The following members were present:

- Jane Fisher Carlson, Chair
- Winifred I. Li, Acting Secretary
- Stephen J. Larocque

Documents in the record include:

- Letter to Michael and Rochella [sic] Nemrow from Robert Como, Deputy Building Inspector, Town of Weston, 2/24/23
- Existing Conditions Site Plan, 61 Beaver Road, prepared by John R. Hamel, Snelling and Hamel Associates, Inc., Lincoln, MA, 3/10/23
- Email from Susan (and Alan) Solomont, 4/13/23
- Email from Siyun Li (and Roy Xu), 4/17/23
- Email from Jonathan (and Tracy) Rosen, 4/22/23

- Email from Jodi (and Jamie) Goldstein, 4/23/23
- Email from Susan Perrine (and Douglas Faller), 4/26/23
- Email from Claudia Krimsky, 4/27/23
- Letter from Nina Pickering-Cook, Anderson & Kreiger LLP, Boston, MA, 4/26/23
- Memo from John Field, Inspector of Buildings/Zoning Enforcement Officer/Land Use Coordinator, Town of Weston, 4/28/23

The subject site, 61 Beaver Road, Weston, Massachusetts (the “Premises”) is located in the Single-Family Residence District A. The lot is conforming. The Premises is improved by a dwelling, also conforming. In question is an accessory structure, an 18-foot by 10-foot shed and carport installed circa December 2022. This shed and carport replaced an 8-foot by 10-foot storage shed which was erected in 2007, on footings. The current shed and carport sit on a slab foundation and two footings which support the two front posts of the carport. The current shed and carport extend into the zoning setbacks, 3.7 feet into the street side- and street center-line setbacks and 3.4 feet into the northwesterly side lot line setback.

Appearing before the Board were Michael and Rochelle Nemrow (the “Petitioners”) and their attorney, Nina Pickering-Cook. Attorney Pickering-Cook explained that her clients are seeking a special permit for the new shed and carport.

Attorney Pickering-Cook stated that a storage shed had been erected on the Premises in 2007 without a building permit and without any zoning permit even though the shed encroached into the setbacks. In December 2022 the Petitioners replaced the 2007 shed with a new, larger shed with attached carport. The new structure is sited approximately at the location of the 2007 shed. The Petitioners stated that although the new shed is larger, the additional area beyond that occupied by the old shed is in the direction away from the property lines. The old shed was on footings; the new shed has a slab foundation and the carport attached to the shed has two posts on footings.

The Board noted that the exact location of the original shed is unknown, and the extent (if any) it extended into the setbacks of the Premises is unknown. Attorney Pickering-Cook stated the old shed was in approximately the same location as the new shed. She also stated that the old shed should be considered a legal pre-existing non-conforming structure since it had stood on the Premises for over ten years without any complaints or notices.

Attorney Pickering-Cook argued that Chapter 40A, Section 6, is applicable to this case and that the new shed and carport merely constitute an alteration of the prior non-conforming shed. The Board noted, however, that the older shed was completely removed, and not merely

altered. The Board concluded that said Section 6 does not protect the new, larger shed and carport. The Board acknowledged that neighbors submitted letters in support of the Petitioners. The Board noted that there are conforming sites where the new shed and carport could be located.

Attorney Pickering-Cook requested that the Board, if it denies the request for a special permit, not rule on the requested variance, because the documents submitted for this hearing only address the request for a special permit.

The Board stated it must rule on all requests in a hearing application. In this case, the Board has before it: the request for a special permit; the request (in the alternative) for a variance; and the request to overturn the (Deputy) Building Inspector's decision.

Following due and open deliberation, the Board, in each case by unanimous roll-call votes, took the following actions: the requested special permit for the shed and carport was denied; the requested variance for the shed and carport was denied without prejudice; and the appeal of the Deputy Building Inspector's decision per his letter dated February 24, 2023 was denied but the fines for not complying with said February 24, 2023 decision are waived for the period until 180 days from May 2, 2023. The variance was denied without prejudice so that the Petitioners may come back to the Board with a request for a variance if they wish to do so.

93 Concord Road: a hearing on a request by **John Hadley** requesting a special permit for a pool and an addition.

The following members were present:

- Jane Fisher Carlson, Chair
- Winifred I. Li
- Stephen J. Larocque, Acting Secretary

Documents in the record include:

- 93 Concord Road, Certified Plot Plan, prepared by Connorstone Engineering, Inc., 3/6/23
- 93 Concord Road, First Floor Plan and Rendering, A-100, 4/28/23
- 93 Concord Road, Second Floor Plan and Rendering, A-101, 4/28/23
- 93 Concord Road, Aerial View, A-102, 4/28/23
- Town of Weston Residential Pool Construction Permit, 93 Concord Road, 5/9/22

- Email from S. McElwee, 4/28/23

The site in question, 93 Concord Road, Weston, Massachusetts (the “Premises”), is located in Single Family Residence District A and comprises about 41,123 square feet in a district that requires a minimum of 60,000 square feet. The lot has 259 feet of frontage in a District requiring a minimum of 250 feet. The existing home is located only about 17.6 feet from the rear lot line and a shed is located only about one foot from the rear lot line. District A requires a 45-foot rear and side setback. The lot is non-conforming and the home is pre-existing non-conforming.

Appearing before the Board was John Hadley (the “Petitioner”) and his wife Annie Shapiro. The Board noted that the drawing package submitted with the ZBA hearing application is incomplete. They would like to see RGFA calculations and dimensions on the elevation drawings.

The Petitioner is proposing to install a pool in a location such that the five-foot pool apron would be encroaching in the setbacks. In addition, the Petitioner is proposing to build an addition attached to the existing garage which is in the setbacks.

The Board noted that the required 5 feet pool apron is not shown on the plot plan. The pool shown is completely within the building zone. If the pool’s 5-foot apron is in the setbacks, that would require a variance, not a special permit, as it is a new non-conformity.

The addition to the back of the garage would be a special permit because it’s an addition to a pre-existing non-conforming structure.

The Petitioner agreed that they would proceed with building a pool that is completely within the building envelope (including the 5-foot apron) so as to avoid needing to obtain a variance.

The Board requested a modified Site Plan with the new location of the pool, certified RGFA calculations for the proposed garage addition, stamped architectural drawings, etc.

Following due and open deliberation, the Board, by unanimous decision, denied a request for a special permit for a pool as shown in the drawings submitted for this hearing.

The Board, by unanimous decision, voted to continue the hearing for the garage addition until May 23, 2023 at 7:00 pm via Zoom.