



Minutes for Meeting

Zoning Board of Appeals, via Zoom

June 14, 2021 at 6:15 PM

Members present: Jane Fisher Carlson, Winifred I. Li, Alan D. Rose, Jr., Stephen J. Larocque, Sujit Sitole, Natalie B. Sawyer

**19 Meadowbrook Road:** a continued hearing on a request by Todd Roitfarb requesting an extension to a special permit regarding an extension to the special permit issued in March 2018

The Board continued the public hearing on June 14, 2021, at 6:15 P.M., via Zoom video. The following members were present:

- Stephen J. Larocque, Acting Chair
- Sujit Sitole, Acting Secretary
- Natalie B. Sawyer

Additional documents in the record:

- Aerial photograph showing location of fence
- Email from T. Roitfarb with hand sketch of plantings dated 6/2/21

Mr. Roitfarb appeared before the Board stating that all the landscape issues with the abutting neighbor have been resolved now that he has submitted the landscape sketches. Mr. Roitfarb informed the Board that he is on track to begin construction of the project within a few months, and is asking for an extension of the 2018 Special Permit through the end of the year.

Following due and open deliberations, the Board unanimously agreed to extend the Special Permit originally issued in March 2018 through December 31, 2021.

**632 Wellesley Street:** a continued hearing on a request by Rob Shannon, Leyne and Shannon Inc. requesting a special permit for an addition.

The Board continued the public hearing on June 14, 2021, at 6:30 P.M., via Zoom video. The following members were present:

- Alan D. Rose, Jr., Acting Chair and Acting Secretary
- Stephen J. Larocque
- Natalie B. Sawyer

Additional documents in the record:

- 632 Wellesley Street, Exterior Elevations, A.3, Rev. 4, dated 6/10/21
- 632 Wellesley Street, Plans, A.5, Rev. 4, dated 6/10/21

Mr. Rob Shannon, the Petitioner, and Mr. Domenico Eramo, project architect appeared before the Board with revised drawings showing that the foundation of the porch and associated stairs had been moved to now be completely outside of the required zoning setbacks. In addition, the proposed addition was revised to reduce the amount of mass that is located in the setbacks. The revised plan lowers the roof height of the home in the setbacks, adds an exterior chimney, and adds windows as shown in the drawings submitted.

Mr. James Steedle, 626 Wellesley Street, stated that he appreciated the revised design. He stated concerns regarding the windows located on the wall facing their home and opined why the windows were not put on the back wall.

The Board noted that the Petitioner's request for an addition on a pre-existing non-conforming lot with a non-conforming structure would not be substantially more detrimental to the neighborhood than the existing dwelling. Although the addition adds mass in the setback, it does not encroach any further into the setbacks than the existing home does. The Board further noted that the petitioner had removed the portion of the deck and stairs that encroached into the setback. Following due and open deliberation, the special permit was granted for the addition to the home as shown on the plans submitted.

**0 Winter Street/35 Gatehouse Drive, Waltham, MA:** a request by Astra Zeneca Pharmaceuticals Limited requesting an amendment to a special permit

The Board held a public hearing on June 14, 2021, at 7:00 P.M., via Zoom video. The following members were present:

- Winifred I. Li, Acting Chair
- Alan D. Rose, Jr., Acting Secretary
- Stephen J. Larocque

Documents in the record include:

- ZBA decision granting variance and special permit dated 5/11/99
- AstraZeneca Fire Access Road Parking Expansion, 35 Gatehouse Drive, Waltham, MA, Legend and General Notes, C1.01, prepared by vhb, Watertown, MA, dated 11/6/20
- AstraZeneca Fire Access Road Parking Expansion, 35 Gatehouse Drive, Waltham, MA, Overall Site Plan, C2.01, prepared by vhb, Watertown, MA, dated 11/6/20
- AstraZeneca Fire Access Road Parking Expansion, 35 Gatehouse Drive, Waltham, MA, Layout and Materials Plan, C3.01, prepared by vhb, Watertown, MA, dated 11/6/20
- AstraZeneca Fire Access Road Parking Expansion, 35 Gatehouse Drive, Waltham, MA, Grading, Drainage, and Erosion Control Plan, C4.01, prepared by vhb, Watertown, MA, dated 1/25/21
- AstraZeneca Fire Access Road Parking Expansion, 35 Gatehouse Drive, Waltham, MA, Utility Plan, C5.01, prepared by vhb, Watertown, MA, dated 1/25/21
- AstraZeneca Fire Access Road Parking Expansion, 35 Gatehouse Drive, Waltham, MA, Site Details, C7.01, prepared by vhb, Watertown, MA, dated 1/25/21
- AstraZeneca Fire Access Road Parking Expansion, 35 Gatehouse Drive, Waltham, MA, Site Details, C7.02, prepared by vhb, Watertown, MA, dated 1/25/21
- AstraZeneca Fire Access Road Parking Expansion, 35 Gatehouse Drive, Waltham, MA, Existing Conditions Plan of Land, Sv-1, prepared by vhb, Watertown, MA, dated 5/6/20
- AstraZeneca Fire Access Road Parking Expansion, 35 Gatehouse Drive, Waltham, MA, Abutters Plan, AB-1, prepared by vhb, Watertown, MA, dated 4/14/20
- AstraZeneca Fire Access Road Parking Expansion, 35 Gatehouse Drive, Waltham, MA, Abutters Plan, AB-2, prepared by vhb, Watertown, MA, dated 4/14/20
- AstraZeneca Fire Access Road Parking Expansion, 35 Gatehouse Drive, Waltham, MA, Abutters Plan, AB-3, prepared by vhb, Watertown, MA, dated 4/14/20
- AstraZeneca Fire Access Road Parking Expansion, 35 Gatehouse Drive, Waltham, MA, Abutters Plan, AB-4, prepared by vhb, Watertown, MA, dated 4/14/20
- Town of Weston Stormwater Permit issued 2/10/21

- Weston Conservation Commission, Determination of Applicability, dated 3/31/21

The subject site, 0 Winter Street, Waltham, also known as 35 Gatehouse Road, Waltham is an office development that is located in both Waltham and Weston. The site consists of 65 acres, 23 of which are located in Weston. The portion of land in Weston is rocky, sloping down sharply. A 100-foot wide conservation restriction surrounds the Weston portion of land on the west and south. In addition, much of the Waltham portion is subject to wetlands and the required 100-foot buffer zone. The main building is located in Waltham, and the parking area is in both Waltham and Weston. The Weston Planning Board issued Site Plan Approval in 1998 for construction of 60 parking spaces in Weston along with an emergency roadway next to the town line, with conditions as to lighting and noise. However, a provision in the Zoning By-Law VIII.A.1(ii) prohibits such parking spaces without a variance in “Office and Research and Development Districts”. The Board of Appeals granted a variance and special permit in 1999 to allow for 60 parking spaces in Weston and to adopt the provisions in the 1998 Site Plan Approval.

Mr. Joseph Connors, attorney for the Petitioner appeared before the Board along with Mr. Paul Joyce, AstraZeneca, and Ms. Jocelyn Gambone, engineer from VHB. Mr. Connors stated that the Petitioner is looking to amend the 1999 variance and special permit to allow 35 additional parking spaces to be located in Weston. The plan does not involve any new buildings, only a redesign of two parking areas (one of which is completely in Waltham) to increase the number of parking spaces.

Ms. Gambone presented the project drawings showing that the Petitioner is adding a total of 101 new parking spaces because capacity in the building has grown and there is the need for more parking spaces. An additional 35 parking spaces are proposed to be in Weston (adding to the existing 60 parking spaces in Weston). The site has wetlands in the area, along with steep slopes and ledge. The proposed project stays outside of the wetlands and minimizes tree clearing. The proposed project would add two catch basins in Weston, with the drainage flowing to the system in Waltham.

The Town of Weston has already issued a Stormwater Permit for the project, and the Weston Conservation Commission has issued a negative determination for the project. The city of Waltham has not yet issued their Stormwater Permit or their Request for Determination from the Conservation Commission, as they are waiting for approval from the Weston ZBA to proceed.

It was noted that all municipal support for the site comes from Waltham, and that there is no road access to the site from Weston. The Board discussed the matters that were brought up in the 1999 ZBA decision regarding the intent of the 1980 provision in the Zoning By-Law

restricting parking in this zoning district. The Board felt that the issue of tax revenue does not apply to meeting the standards for a variance.

Following due and open deliberation, the Board determined unanimously that the Petitioner's proposed plan to add 35 parking spaces in Weston meets the standards for amending the existing variance and special permit. The Board found that the Petitioner has shown that there is a substantial hardship based on the topographical difficulties of the site including wetlands, slope, and ledge. In addition, the additional parking spaces would not be more detrimental to the existing site conditions.

The amendment to the variance and special permit was issued subject to the condition that the Petitioner obtains all required approvals from the City of Waltham.

**295 Glen Road**: a request by Zach Burnett on behalf of Bridget Thomsen for a special permit/amendment to a special permit for a pool.

The Board held a public hearing on June 14, 2021 at 7:15 P.M., via Zoom video. The following members were present:

- Jane Fisher Carlson, Chair and Acting Secretary
- Winifred I. Li
- Alan D. Rose, Jr.

Documents in the record include:

- ZBA special permit issued in December, 2020
- ZBA special permit issued 2018
- ZBA variance issued 1964
- Proposed Pool Plan, prepared by CCR Associates, 40 Mears Avenue, Quincy, Massachusetts, 02169, dated 10/30/20
- Pool House Plan Drawings, prepared by Zach Burnett, dated 10/29/20
- Proposed Pool and Cabana Plan, prepared by CCR Associates, dated 4/23/21

The property in question, 295 Glen Road, Weston, Massachusetts (the "Premises") is primarily located in Single Family Residence District B, with the southwest edge of the lot sited in Single Family Residence District C, according to Weston's Geographic Information System (GIS). The applicable zoning district is based upon the site of the dwelling; therefore, this lot is subject to

District B zoning. An existing wetland area runs from the northeast corner of the Premises to its southwest corner. A 10-foot wide drainage easement runs along a portion of the westerly side of the Premises toward the southwest.

The lot area is approximately 84,942 square feet, in a District requiring a minimum of 40,000 square feet. Because the lot is landlocked, relying on access to Glen Road from a 40-foot wide easement, the Premises have no street frontage, nor any lot width at the street setback. The access easement is jointly owned by 291, 295 and 297 Glen Road. Under the Weston Zoning by-law, the minimum street frontage and lot width at street setback is 150 feet for lots created before 1997.

In 2008, the Zoning Board of Appeals (ZBA) approved a special permit to construct a replacement dwelling to be sited over 200 feet from the street and street centerline, complying with the minimum District requirements of 60 feet from the street and 85 feet from the street centerline. The proposed dwelling was sited 40 feet from the east, 223.1 feet from the north, and 92.7 feet from the west side yard lot lines, with a detached garage sited 52.9 feet from the south and 49.1 feet from the east yard lot lines, in a District requiring a minimum side yard setback of 35 feet. The height of the dwelling was 32 feet, 8 inches, and the height of the detached garage was 18 feet, 6 inches in a District allowing a maximum height of 37 feet.

In December, 2020, the ZBA approved a special permit to construct a pool, hot tub and pool house on the Premises. Another previous ZBA case for the Premises involved a variance, granted on March 26, 1964, permitting a driveway over the right-of-way easement in order to access a dwelling on the lot.

Appearing before the Board were Zach Burnett of Burnett Remodeling, 18 Shady Hill Road, Weston, Massachusetts (the "Petitioner") and Bridget Thomsen, the owner of the Premises. The Petitioner is proposing to enlarge the pool that was approved in the Board's December, 2020 special permit. The originally-approved pool was 16 feet wide by 32 feet long, and the enlarged pool would be 18 feet by 36 feet. The pool house allowed by the ZBA's 2020 special permit has already been built.

The Board noted that the revised pool location was closer to the home because the proposed pool is now larger and that the hot tub location is different from the original proposal. The Board also noted a small discrepancy (about one foot) in the location of the pool house according to the two plans. The Petitioner explained that the different distances were due to measurements from the roof overhang, rather than from the building's foundation.

The ZBA's 2020 decision stated that some neighbors of the Premises requested a landscape

plan that would address buffering, privacy, and lighting issues, and noted that the then-prospective owner of the Premises had agreed to discuss landscaping plans with them.

A neighbor, Mr. William Martin of 301 Glen Road, Weston, Massachusetts, appeared before the Board to say that he had not yet seen a landscape plan which would screen the pool and pool house from his property.

Ms. Thomsen, the owner of the Premises, explained that she was currently working with Lynch Landscaping on a plan and that plantings would be in place beginning in September, 2021.

The Board requested that the Petitioner submit a landscape and lighting plan for the project and voted unanimously to continue the hearing until June 28, 2021 at 7 p.m.

**7 Columbine Road**: a request by Randall Davis and Dana Penney for a special permit for an addition.

The Board held a public hearing on June 14, 2021, at 7:30 P.M., via Zoom video. The following members were present:

- Winifred I. Li, Acting Chair
- Alan D. Rose, Jr.
- Stephen J. Larocque, Acting Secretary

Documents in the record:

- 7 Columbine Road, Existing Lower Level Plan, EX1.00, prepared by Flavin Architects, dated 4/23/21
- 7 Columbine Road, Existing First Floor Plan, EX1.01, prepared by Flavin Architects, dated 4/23/21
- 7 Columbine Road, Existing Exterior Elevation, EX2.00, prepared by Flavin Architects, dated 4/23/21
- 7 Columbine Road, Existing Exterior Elevation, EX2.01, prepared by Flavin Architects, dated 4/23/21
- 7 Columbine Road, Lower Level Plan, A1.00, prepared by Flavin Architects, dated 4/23/21
- 7 Columbine Road, First Floor Plan, A1.01, prepared by Flavin Architects, dated 4/23/21

- 7 Columbine Road, Exterior Elevations, A2.00, prepared by Flavin Architects, dated 4/23/21
- 7 Columbine Road, Exterior Elevations, A2.01, prepared by Flavin Architects, dated 4/23/21
- 7 Columbine Road, Site Plan, prepared by Snelling & Hamel Associates, dated 5/13/21
- 7 Columbine Road, Neighborhood Locus Plan, C0.01, prepared by WSP, dated 5/14/21
- ZBA decision granting a variance for an addition, dated 6/15/78
- ZBA decision granting a variance for a chimney, dated 3/20/86

The site is located in Residential District C, with a home built in 1950. The lot is conforming, but the home encroaches into the setbacks. The existing garage is 23.6 feet from the lot line in a district that requires 25 feet. Variances were issued in 1978 and 1986 for additions to the home.

Jonathan White, attorney for Randall Davis and Dana Perry, the Petitioners, appeared before the Board to explain that the Petitioners are looking to modify their home to make it handicap accessible. Architect for the Petitioners, Heather Souza, also appeared before the Board describing the proposed addition. The modifications include adding 437 ft<sup>2</sup> to the home, all in the front of the home. None of the addition would be located in the zoning setbacks.

The existing RGFA/lot area ratio is 10.5%, and the proposed RGFA/lot area ratio would be 12%. The Petitioners presented information showing that the average RGFA/lot area ratio of neighboring homes is 13%.

The Board noted that the Petitioner's request for an addition on a conforming lot with a non-conforming structure would not be substantially more detrimental to the neighborhood than the existing dwelling. The addition is fully conforming to zoning requirements. Following due and open deliberation, the special permit was granted for the addition to the home as shown on the plans submitted.

**316 Wellesley Street**: a request by Dr. Sohail Masood for an amendment/special permit for an accessory dwelling.

The Board held a public hearing on June 14, 2021, at 7:45 P.M., via Zoom. The following members were present:

- Winifred I. Li, Acting Chair and Acting Secretary
- Alan D. Rose, Jr.

- Stephen J. Larocque

Documents in the record include:

- 316 Wellesley Street, A1 – Cover Sheet, prepared by I.S. Hernandez Services INC (a/k/a I.S. Hernandez Design Services Inc.), dated 1/27/21
- 316 Wellesley Street, A2 – Existing Basement and First Floor Plan, prepared by I.S. Hernandez Services INC, dated 1/27/21
- 316 Wellesley Street, A3 – Existing Second and Third Floor Plan, prepared by I.S. Hernandez Services INC, dated 1/27/21
- 316 Wellesley Street, A4 – Existing Second Floor [Plan], prepared by I.S. Hernandez Services INC, dated 1/27/21
- 316 Wellesley Street, A6 [*sic*] - Existing Third Floor Plan (Sheet #A-5 of 5), prepared by I.S. Hernandez Services INC, dated 1/27/21
- 316-320 Wellesley Street, Site Plan, prepared by Snelling & Hamel Associates, Inc., dated 4/12/21
- Email from George Fazio to Valerie Geary, dated 6/7/21
- Email from Phyllis Halpern to John F. Field (for ZBA), dated 6/4/21
- ZBA decision granting a variance for a second home on the lot, dated 10/30/96
- ZBA decision granting a variance for an addition to the historic home, dated 9/30/97
- ZBA decision allowing withdrawal of a special permit application, dated 4/14/99
- Title 5 Official Inspection Form, 316 Wellesley Street, signed by Ryan Boyd, Butler Septic Services, LLC, dated 3/12/19

The house in question, commonly known as 316 Wellesley Street, Weston, Massachusetts, is located in Single Family Residence District A on the same lot as the house commonly known as 320 Wellesley Street. The entire lot comprises approximately 122,015 square feet of area. The ZBA granted a variance in 1996 allowing two homes on the same lot. The original home, 316 Wellesley Street, is a historic structure, built circa 1773 (the so-called “Joel Smith House”). The Smith House is pre-existing non-conforming: it is located 22.3 feet from the street line and 53.1 feet from the street centerline in a district requiring 60 feet and 85 feet respectively; and it is 44.4 feet from the northerly side lot line in a district requiring 45 feet.

The previous owner, while in the process of rehabilitating the historic house, determined the house had structural problems which made it uninhabitable. In that context, the ZBA granted a variance in 1997 for an addition to 316 Wellesley Street, which variance was subject to specific conditions including the execution of a preservation deed restriction on the house. In her email referenced above, Phyllis Halpern, co-chair of the Weston Historical Commission, states that the Historical Commission expects the preservation deed restriction to be executed soon by the current owner of 316 Wellesley Street.

Dr. Sohail Masood (the “Petitioner”) appeared before the Board on behalf of the current owner, Masood Mansion, LLC. ZBA member Alan D. Rose, Jr. began the hearing by stating that George Fazio is a friend and, because Mr. Fazio submitted a letter to the Board expressing concerns about and objections to the petition, Mr. Rose informed the Petitioner that he (Mr. Rose) felt he could act impartially but that the Petitioner could request a continuance of the hearing so a different Board member could be substituted in place of Mr. Rose. Dr. Masood expressed confidence in Mr. Rose’s ability to render a fair decision and requested that the hearing proceed as scheduled.

The Petitioner stated that he bought the two houses on the lot in 2019. He likes old homes and wished to clean up the Joel Smith House so his daughter could live in it. While renovating 316 Wellesley Street, he discovered the house had structural problems due to mold infestation throughout the house; the mold had developed because the house had been neglected. He stated that large portions of the interior and exterior of the house had to be demolished and rebuilt, resulting in unexpectedly large expenditures. Dr. Masood’s daughter is currently living in the home, but the Petitioner is concerned that if his daughter marries and moves away, the house will become unoccupied. He thinks the house needs occupants in order to be maintained. So he would like the owner to be able to rent out the house to help with maintenance expenses, if his daughter should move out.

The Board reviewed the nine requirements listed in Section VI.G of the Zoning By-Law that are necessary in order to obtain a special permit for an accessory apartment. It was determined that all of the nine requirements had been met in this case except for number 5, which requires the accessory apartment to have (among other elements) no more than two bedrooms. The plans submitted to the ZBA show the home currently has three bedrooms.

The Board discussed the dilemma of the use of this historic house. The Town, through its ZBA and Historical Commission, and with the urging of members of the Weston Historical Society, has gone to great effort to preserve this uniquely historic building during the last quarter century. If the Joel Smith House is to be preserved, the Board agreed that not allowing the house to be used as an accessory apartment would present the owner with a hardship because of the unique circumstances surrounding the historic structure.

After further careful deliberation, the Board determined that the best way to proceed with preserving this historically significant house while permitting its use as an accessory apartment would be to grant a variance from Section VI.G.5 of the Zoning By-Law to allow the house to have up to three bedrooms (exceeding the maximum of two bedrooms specified in the Zoning By-Law). The Board rejected the alternative of changing the interior rooms to eliminate a bedroom in order to ensure there would not be more than two bedrooms.

The Board further specified that the ability to use the Joel Smith House as an accessory apartment is subject to the Board receiving confirmation that there is a current Title-5-compliant septic system for the house. (Note: such confirmation was received prior to the filing of this decision.)

Following due and open deliberation, the Board, by unanimous roll-call vote, granted a variance from Zoning By-Law Section VI.G.5 to allow the Joel Smith House at 316 Wellesley Street to remain with its current interior configuration of rooms (as shown on the plans in the file which are listed above) including up to three bedrooms even if it is used as an accessory apartment. The Board determined that (1) due to the unique circumstances regarding this house of singular historic significance, including the Weston Historical Commission's interest in, and the previous ZBA decisions in support of, the preservation of the Joel Smith House, a literal enforcement of the Zoning By-Law would involve a substantial hardship to the owner of the property, and (2) the variance can be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning By-Law.

The Board also issued, by unanimous roll-call vote, a special permit for the use of the Joel Smith House at 316 Wellesley Street as an accessory apartment, subject to the following conditions:

1. the rental of the Joel Smith House is limited to being listed or advertised as a two-bedroom apartment;
2. at any time and at all times, the number of persons living in the house is limited to either:
  - a. no more than four adults or
  - b. no more than two adults plus no more than three children each of whom is under the age of 21 and related (by blood or adoption) to at least one of the adults living in the house;
3. any rental must have a lease with a duration of at least one year; and
4. this special permit for an accessory apartment expires when the current owner (Masood Mansion, LLC) sells or otherwise disposes of the property (that is, the Joel Smith House, 316 Wellesley Street and/or 320 Wellesley Street) or any portion thereof, or after 30 years from the date this decision is filed, whichever occurs first.

It was determined that the use of the house at 316 Wellesley Street as an accessory apartment with the conditions set forth in this decision would not be injurious, obnoxious, offensive, dangerous, a nuisance, or detrimental to the community or neighborhood.

