



Minutes for Meeting

Zoning Board of Appeals, via Zoom

November 7, 2023 at 7:00 PM

Members present: Jane Fisher Carlson, Wendy Kaplan Armour, Tristan Colangelo

**150 Highland Street:** a hearing on a request by the Town of Weston Fire Department for an extension to a variance for a communication tower.

The following members were present:

- Jane Fisher Carlson, Chair and Acting Secretary
- Wendy Kaplan Armour
- Tristan Colangelo

Documents in the record include:

- ZBA Variance Decision, 150 Highland Street, filed 12/18/19
- 150 Highland Street, Decision After Remand, filed 12/12/22
- Certificate of Town Clerk, Weston Massachusetts, dated 1/23/23
- Letter from Fire Chief Justin D. Woodside to ZBA dated 9/19/23

The site in question, 150 Highland Street, Weston, Massachusetts (the “Property”), is a municipal lot in Single Family Residence District A. On December 12, 2022, the Board filed a Decision after Remand (the “remand decision”) with the Town Clerk. The remand decision modified the Board’s original variance, filed with the Town Clerk on December 18, 2019, allowing a municipal communications tower to be constructed on the Property.

Weston Fire Chief Justin D. Woodside appeared before the Board to explain that the Fire Department is asking for an extension to the variance granted under the remand decision because the Town plans to replace an existing water tank on the Property. The Town needs

access to the site for construction of the water tank before construction of the communications tower can begin.

An abutter, Tom Seeman of 100 Highland Street, Weston, Massachusetts, appeared before the Board and said that he had no issues with the request for an extension.

The Board noted that under Massachusetts General Laws, Chapter 40A, Section 10, (1) the Fire Department's request for an extension of the variance was filed in a timely fashion and (2) the Board was only able to extend the variance for a period of six months.

After due and open deliberations, the Board unanimously, by roll call, voted to grant a six-month extension to the variance granted under the remand decision issued on December 12, 2022. The new expiration date of the variance is June 12, 2024. All of the provisions of the remand decision, including, but not limited to, its permissions and conditions, remain in effect.

**89 Black Oak Road:** a hearing on a request by Ernst Schleimer requesting a variance for a portion of a foundation to be located in the setbacks.

The following members were present:

- Jane Fisher Carlson, Chair
- Wendy Kaplan Armour
- Tristan Colangelo, Acting Secretary

Documents in the record:

- As-Built Site Plan, 89 Black Oak Road, prepared by Snelling & Hamel Associates, Inc., 10/12/23
- Proposed Site Plan, 89 Black Oak Road, prepared by Snelling & Hamel Associates, Inc., 3/4/22
- Letter from E. Schleimer and M. Keats, 89 Black Oak Road to ZBA, 11/3/23
- RGFA Calculation Plan – Basement, 89 Black Oak Road, RGFA 1, prepared by Lincoln Architects LLC, 9/18/23
- RGFA Calculation Plan – First Floor, 89 Black Oak Road, RGFA 2, prepared by Lincoln Architects LLC, 9/18/23
- RGFA Calculation Plan – Second Floor, 89 Black Oak Road, RGFA 3, prepared by Lincoln Architects LLC, 9/18/23
- Basement Floor Plan, 89 Black Oak Road, A1, prepared by Lincoln Architects LLC, 12/6/21

- First Floor Plan, 89 Black Oak Road, A2, prepared by Lincoln Architects LLC, 12/6/21
- Second Floor Plan, 89 Black Oak Road, A3, prepared by Lincoln Architects LLC, 12/6/21
- Roof Plan, 89 Black Oak Road, A4, prepared by Lincoln Architects LLC, 12/6/21

The subject site, 89 Black Oak Road, (the “Premises”), is a conforming lot in Residential District A. The existing home is non-conforming as the existing tennis court and existing pool encroach in the northerly and easterly setbacks.

Ernst Schleimer (the “Petitioner”) appeared before the Board to explain that although he submitted a ZBA hearing application requesting a variance, he is also making the case that a variance is not required in this circumstance. The Petitioner showed photos of the newly constructed basement door with a “well” for egress and stairs, along with three tiers of retaining walls to allow for a proper egress from the basement. The Petitioner noted that the retaining walls are not attached to the building structure or foundation. He also noted that none of the retaining walls are above grade, and therefore should not be considered a “structure” as the term is defined by the Zoning By-Law, and, therefore, not subject to the zoning setbacks.

John Field, Town of Weston Building Inspector and Zoning Enforcement Officer, appeared before the Board stating that he is unsure if the retaining walls should be considered part of the structure or not. If they are associated with or attached to the foundation, then the retaining walls would be subject to the zoning setbacks. Mr. Field gave the example that a bulkhead is usually affixed to the foundation of a home and is therefore considered part of the structure.

The Petitioner also noted that the retaining walls are in a secluded area on his lot, and that none of his neighbors can see the area. The Board noted that the nearest homes are approximately 200 feet away.

The Board discussed the issue of whether the three tiers of retaining walls should be considered as part of the building structure or not. The Board members concluded that since the walls are not physically attached to the home or the foundation, and since the home was built initially without these retaining walls, they should not be considered not part of the structure, and, therefore, not subject to zoning setbacks.

Following due and open deliberation, the Board, by unanimous roll-call vote, found that there is no need for a variance given that the retaining walls in question are not part of the foundation or building structure.