



Minutes for Meeting

Zoning Board of Appeals, via Zoom

May 19, 2021 at 7:00 PM

Members present: Jane Fisher Carlson, Alan D. Rose, Jr., Natalie B. Sawyer

83 Newton Street: a request by Integrated Real Estate Development LLC requesting an amendment to a special permit.

Pursuant to the foregoing notice the Board held a public hearing on May 19, 2021, at 7:00 P.M., via Zoom video. The following members were present:

- Jane Fisher Carlson, Chair and Acting Secretary
- Alan D. Rose, Jr.
- Natalie B. Sawyer

Documents in the record include:

- Zoning Board of Appeals (ZBA) Decision dated 02/12/19 granting a special permit for a replacement dwelling
- "Proposed Driveway Plan", 83 Newton Street, prepared by Cheney Engineering Co., Inc., dated 10/27/20
- Order of Taking, 83-85 Newton Street, Town of Weston, dated 01/12/21
- Town of Weston Easement Exhibit Plan, 83-85 Newton Street, prepared by Lighthouse Land Surveying, LLC, dated 06/29/20, revised 12/02/20
- Enlargement Showing Parcels Being Exchanged and Setback Distance of the House at 85 Newton Street as a Result of the Proposed Exchange

The property in question, 83 Newton Street, Weston, Massachusetts (the "Premises"), is located in Single Family Residence District A and comprises approximately 238,709 square feet of area within two parcels: Lot 17 (comprising 1.08 acres), and Lot 18-20 (comprising 4.4 acres, which wraps around Lot 17), in a District requiring a minimum of 60,000 square feet. The Premises are landlocked, with access to the street via a 20-foot right-of-way easement over 85

Newton Street. The Premises therefore have no street frontage and no lot width at the street setback, in a District requiring a minimum of 200 feet for lots created before 1997.

Appearing before the Board were Joshua Davidson of Integrated Real Estate Development LLC, of 73 Lexington Street, Newton, Massachusetts 02466 (the "Petitioner") and Attorney Jonathan White of Wilchins Cosentino & Novins, LLP, of 20 William Street, Suite 130, Wellesley, Massachusetts 02481. A new dwelling is currently being built on the Premises under the Special Permit received from the ZBA on February 12, 2019. This new dwelling will comply with all zoning setbacks under the Town of Weston Zoning By-law.

Since 83 Newton Street does not have any street frontage, it has a 20-foot wide easement along the driveway of 85 Newton Street. The driveway is in the vicinity of the property line between 75 Newton Street and 85 Newton Street. A land surveyor laying out a drainage easement for the Town of Weston beneath the shared driveway recently determined that the driveway encroached onto the abutting property at 75 Newton Street. The owners of 75, 83, and 85 Newton Street have worked out a potential land swap agreement so that the existing driveway can remain where it is currently located. The proposed land swap agreement would result in 75 Newton Street giving 332 square feet of land to 85 Newton Street; 85 Newton Street giving 75 Newton Street 165 square feet of land, and 83 Newton Street giving 75 Newton Street 170 square feet of land. In addition, the location of the driveway easement will be revised.

The proposed land swap will result in the lot at 83 Newton Street being decreased by 170 square feet in area, reducing the lot size from 238,709 square feet to 238,539 square feet. The lot is still well above the minimum lot size requirement in Single Family Residence District A. This decrease in lot area and the new lot boundaries will have no impact on the setbacks of the new home from the lot lines.

The Petitioner explained that he would present the land swap proposal to the Planning Board in order to obtain approval for the revised lot.

Following due and open deliberation, the Board, by unanimous decision, decided that the request for an amendment to the Special Permit issued by the Board on February 12, 2019 is not necessary because the lot changes that have been proposed in the upcoming land swap are de minimis and have no effect on the Board's grant of the Special Permit.

85 Newton Street: a request by Jedd and Kirsten Morin requesting an amendment to a special permit.

Pursuant to the foregoing notice the Board held a public hearing on May 19, 2021, at 7:00 P.M., via Zoom video. The following members were present:

- Jane Fisher Carlson, Chair and Acting Secretary

- Alan D. Rose, Jr.
- Natalie B. Sawyer

The property in question, 85 Newton Street, Weston, Massachusetts, (the “Premises”) is located in Single Family Residence District A and comprises 84,944 square feet in a District requiring a minimum of 60,000 square feet. The Premises have 313 feet of frontage, and the lot width at the street setback is slightly less than that, in a District requiring a minimum of 200 feet for lots created before 1997. The Premises therefore constitute a conforming lot. The Premises are triangular in shape, with wetlands on the westerly side of the lot. Wetlands, including the associated 100-foot wetland buffer, cover approximately 80 percent of the lot. Newton Street runs along the northeasterly side of the Premises. A 20-foot wide easement runs from Newton Street along the southeasterly property line, which includes the driveway for the Premises and provides access to the abutting lot at 83 Newton Street. The parcel at 83 Newton Street, south of the Premises, is set back from the street and has no frontage.

The existing dwelling on the Premises is 20.3 feet from the street side line and 37.8 feet from the street center line, in a District requiring structures to be 60 feet from the street side line and 85 feet from the street center line. The dwelling is therefore pre-existing and nonconforming due to the encroachment into the easterly street side and street center line setbacks. The garage is also a pre-existing, nonconforming structure, as it is 29.7 feet from the lot line in a District requiring a minimum setback of 45 feet.

Previous Zoning Board of Appeals (ZBA) cases include:

- ZBA Decision dated May 21, 1973: a variance was granted for an addition encroaching into street side and center line setbacks
- ZBA Decision dated August 13, 1973: an extension was granted for the previous variance (for the addition encroaching into street setback)
- ZBA Decision October 15, 1974: a Special Permit was granted for storage of panel truck
- ZBA Decision dated May 3, 2013, a Special Permit was granted for an addition
- “Proposed Driveway Plan”, 83 Newton Street, prepared by Cheney Engineering Co., Inc., dated 10/27/20
- Order of Taking, 83-85 Newton Street, Town of Weston, dated 01/12/21
- Town of Weston Easement Exhibit Plan, 83-85 Newton Street, prepared by Lighthouse Land Surveying, LLC, dated 06/29/20, revised 12/02/20
- Enlargement Showing Parcels Being Exchanged and Setback Distance of the House at 85 Newton Street as a Result of the Proposed Exchange

Appearing before the Board were Kirsten Morin (with Jedd Morin, the “Petitioners”) and Attorney Jonathan White of Wilchins Cosentino & Novins, LLP, of 20 William Street, Suite 130, Wellesley, Massachusetts 02481, requesting an amendment to the ZBA’s 2013 Special Permit to allow for a change in lot size. The driveway at 85 Newton Street is shared with, and provides access to, 83 Newton Street, since 83 Newton Street has no street frontage. The driveway is in the vicinity of the property line between 75 Newton Street and 85 Newton Street. A land

surveyor laying out a drainage easement for the Town of Weston beneath the shared driveway recently determined that the driveway encroached onto the abutting property at 75 Newton Street. The owners of 75, 83, and 85 Newton Street have worked out a potential land swap agreement so that the existing driveway can remain where it is currently located. The proposed land swap agreement would result in 75 Newton Street giving 332 square feet of land to 85 Newton Street; 85 Newton Street giving 75 Newton Street 165 square feet of land, and 83 Newton Street giving 75 Newton Street 170 square feet of land. In addition, the location of the driveway easement will be revised.

The lot at 85 Newton Street will be increased by 167 square feet in area. The change in lot lines has no effect on the Zoning Board of Appeals 2013 Special Permit, which was granted for an addition, as the Premises constitute a completely conforming lot. In fact, the addition's setbacks are improved with the small increase in lot size.

The Petitioners stated that they would present the land swap proposal to the Planning Board to obtain approval for the new lot.

Following due and open deliberation, the Board, by unanimous decision, decided that the Petitioners' request for an amendment to the Special Permit issued by the Zoning Board of Appeals on May 3, 2013 is unnecessary because the lot changes due to the proposed land swap are de minimis and have no effect on the Board's grant of the Special Permit.

55 Scotch Pine Road: request by Harvey Wilk requesting a variance for a pool.

Pursuant to the foregoing notice the Board held a public hearing on May 19, 2021, at 7:20 P.M., via Zoom video. The following members were present:

- Jane Fisher Carlson, Chair
- Alan J. Rose, Jr.
- Natalie B. Sawyer, Acting Secretary

Documents in the record include:

- Memo from Weston Conservation Commission to H. Wilk dated 3/26/21
- 55 Scotch Pine Road Plan, Variance Petitioner's Plan, prepared by The Jillson Company, Inc., dated 2/23/21
- 55 Scotch Pine Road Exhibits A-I, submitted with hearing application, March 2021

The site in question, 55 Scotch Pine Road (the "Premises"), is located in Residential District A. The lot is non-conforming because it has 214 ft of street frontage in a district that requires 200

ft. The dwelling is non-conforming because the garage is 44.5 ft from the side lot line in a district that requires a 45-foot setback.

Harvey and Elyse Wilk (the “Petitioners”) appeared before the Board with their counsel, Elizabeth Nolan, and engineer, Kevin O’Leary, The Jillson Company, Inc. The Petitioners seek to build a pool within the rear setback. The proposed pool, with a 5-foot pool apron, would be 31.5 ft from the rear lot line. The required setback is 45 ft. 3 Sandra Kraft, 60 Scotch Pine Road, addressed the Board stating that she is supportive of the proposed pool and its location.

The Board questioned whether the Petitioners’ request to build a pool that extends into the zoning setback constitutes a substantial hardship, as is required by MGL Chapter 40A, Section 10. Attorney Nolan stated that her understanding was that the Board could determine that there is a substantial hardship if any permitted use of the property could not be obtained while keeping with the bylaws. The Board asked for case law regarding Attorney Nolan’s statement regarding substantial hardship. The Board unanimously voted to continue the hearing until June 1, 2021 at 7:30 pm.

29 Derby Lane: request by Ty Howton requesting a special permit/variance for an addition.

Pursuant to the foregoing notice the Board held a public hearing on May 19, 2021, at 7:40 P.M., via Zoom video. The following members were present:

- Jane Fisher Carlson, Chair
- Alan J. Rose, Jr., Acting Secretary
- Natalie B. Sawyer

Documents in the record include:

- Weston ZBA decision, 29 Derby Lane, granting a variance for a garage, dated 9/14/82
- Weston ZBA decision, 29 Derby Lane, granting a special permit for an addition, dated 3/16/21
- Letter from the Historical Commission dated 4/16/21
- Existing Conditions Plan, 29 Derby Lane, prepared by GLM Engineering Consultants, Inc., dated 12/18/20
- Proposed Greenhouse Plan, 29 Derby Lane, prepared by GLM Engineering Consultants, Inc., dated 5/14/21
- Proposed Arch Site Plan, 29 Derby Lane, A000, prepared by Daniel H. Reynolds Design Collaborative LLC, dated 2/22/21
- Proposed Greenhouse Floor Plan, 29 Derby Lane, A100, prepared by Daniel H. Reynolds Design Collaborative LLC, dated 2/22/21

- Proposed Greenhouse Roof Plan, 29 Derby Lane, A101, prepared by Daniel H. Reynolds Design Collaborative LLC, dated 2/22/21
- Proposed Greenhouse Elevations, 29 Derby Lane, A201, prepared by Daniel H. Reynolds Design Collaborative LLC, dated 2/22/21
- Proposed Greenhouse Elevations, 29 Derby Lane, A202, prepared by Daniel H. Reynolds Design Collaborative LLC, dated 2/22/21
- Proposed Greenhouse Elevations, 29 Derby Lane, A203, prepared by Daniel H. Reynolds Design Collaborative LLC, dated 2/22/21
- Proposed Greenhouse Cross Section, 29 Derby Lane, A301, prepared by Daniel H. Reynolds Design Collaborative LLC, dated 2/22/21
- Existing Photos and Proposed Renderings, 29 Derby Lane, EX100, prepared by Daniel H. Reynolds Design Collaborative LLC, dated 2/22/21
- RGFA Plan Diagrams, 29 Derby Lane, AD100, prepared by Daniel H. Reynolds Design Collaborative LLC, dated 4/2/21

The site in question, 29 Derby Lane, Weston, Massachusetts (the “Premises”) is located in Single Family Residence District B. The lot is nonconforming due to lack of area, since it measures 22,600 square feet, and a conforming lot in District B requires 40,000 square feet. The home is also a pre-existing nonconforming dwelling because it encroaches into the setbacks toward the southerly side lot line and the rear lot line. The Zoning Board of Appeals (ZBA) issued a variance in 1982 to allow a garage addition to encroach into the rear lot line setback and issued a special permit in March 2021 to enclose and expand an existing porch.

The owners of the Premises, Ty and Cathy Howton (the “Petitioner”) appeared before the Board with architect Dan Reynolds, and project manager Drew Arias. The Petitioner is seeking to build a greenhouse in the front of the home. The greenhouse would add approximately 517 ft² of living area. The proposed greenhouse would be 42 ft from Derby Lane, in a district that requires 50 ft. The home is currently 56.7 ft away from Derby Lane. The Petitioner informed the Board that the Historical Commission approved the alterations to the home in a demolition application letter dated 4/16/21.

The Board noted that the Petitioner’s request to build a greenhouse that extends into the zoning setback does not meet the requirements of the state statute, GL ch. 40A, sec. 10, for issuing a variance. The Board also noted that the proposed increase in RGFA was also potentially problematic given the existing lot coverage.

Following due and open deliberation, the Board unanimously agreed to allow the Petitioner to withdraw their application without prejudice.

