# TOWN OF WAYLAND

MASSACHUSE1TS 01778

# BOARD OF APPEALS

TOWN BUILDING 41 COCHITUATE ROAD

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MINUTES

**June 26, 2018**

Attending the meeting held at 7pm in the Selectmen's Meeting Room in Wayland Town Building located at 41 Cochituate Rd. Wayland, were members Jonathan Sachs, Chair, Thomas White, Aida Gennis, David Katz, Jim Grumbach, and Associate Members Linda Segal, and Shaunt Sarian. April LeShore was in attendance to take the minutes. Audio & Video recorded by WayCAM.

## Jonathan reads the legal description for Case #18-13:

Application of **Richard Olstein,** the owner and applicant for any necessary approvals, findings, special permits and/or variances as may be required in order to demolish an existing nonconforming single family dwelling and reconstruct a single family dwelling in a conforming location on a proposed nonconforming lot (insufficient lot square footage) that increases the gross floor area by more than 20% under the Town of Wayland Zoning By-Laws Chapter 198; including but not limited to, Sections 104.2, 201, 203, 401.1.2, 401.1.3, and 401.16. The property is located at **33 and 37 Edgewood Rd** which is in an R-20 Single Residence district. Case #18-13

**Panel:** Jonathan Sachs, Aida Gennis, Thom White, Jim Grumbach and David Katz. David Katz will write the decision.

**Richard Olstein** acknowledges his self to the board of his presence.

**Jonathan:** We have your materials; has anyone informed you of our standard requirement of a site visit, under sections 401.1.5 and 401.1.6 in order to grant applicant's permit?

**Richard Olstein:** the applicant agrees that he was informed of a site visit needed.

The board agreed to a site visit 8:00am and a continued hearing at 7:00 pm on July 11, 2018.

## Jonathan reads the legal description for Case #18-14

Application of **Richard Wilner,** the owner and applicant for any necessary approvals, findings, special permits and/or variances as may be required to permit a 3 bay garage addition to single dwelling on a preexisting nonconforming lot (insufficient lot square footage) under the Town of Wayland Zoning By­ laws Chapter 198; including but not limited to, Sections 104.2, 201,203, 401.1.2, 401.13; and Article 8, Table of Dimensional Requirements. The property is located at **33 Lakeshore Drive** which is in the R-20 Single Residence and Aquifer Protection districts. Case #18-14

**Richard Wilner** acknowledges his presence

Resident moved from north Wayland a couple of months ago to 33 Lakeshore Dr. There is no garage; we are currently parking our cars on the southwest portion of the lot. We would like to build a garage where our cars are currently being parked. The shape of the lot ideally locates the garage in that spot, because on the back side of the lot is Walkum Path and that's were my septic system is. There is no way to excavate or put a slab there. The only pre-existing nonconformity is the front yard setback. The letter will explain the motivation for the project. I'm happy to talk more about it and answer question

**Jonathan:** Currently you will not be in conformance with the front yard setback and you will have created a new nonconformity, which puts us in the legal posture of variance.

**Richard:** I have an exhibit that shows there are lots of similar exceptions on Lakeshore Drive with preexisting non-conformities. On one side is at least four sites a couple of minutes down the road, with three or more cars parked on site.

**Jonathan:** It's an interesting situation because it not really procedural. You are creating a new non-conformity where you were previously conforming, which puts us in a different standard.

**Jim:** Basically, a variance is governed by statute in Massachusetts, which provides that if you are creating a new non-conformity, you have to show that there is something unique about the lot in terms of its shape, topography or soil conditions that makes it necessary.

**Thom:** If I read this correctly the front yard and side yard are already non-conforming, wouldn't that make it an expansion of the existing non-conformity? Because the rear setback requirement is 30 ft., vs. actual 18.4 ft., and the front setback requirement is 30 ft., vs. 27 ft. actual.

**Jonathan:** The application may be incorrect

**Thom:** The frontage is on two streets. But, the non-conformity already exists. If it's 27 and the back is supposed to be 30 and its 18.4. I guess that is my interpretation of the existing site plan. I recognize the nature of the site makes the termination of the side lot line ambiguous.

**Jim:** According to the plot plan, the second paragraph, the proposed addition will require a variance of the Town of Wayland

**Aida:** It could be the surveyor

**Thom:** I would be looking to the board to offer some opinion on this because my interpretation of this 216.7 feet is the rear lot line but, I suppose it could be interpreted as the side lot line.

**Jonathan: W**e also don't have an existing measurement from the dwelling to Lakeshore Drive that measurement is missing. We have a measurement to Walkum, we have the 21.7, which is the proposed distance.

**Thom:** True, you are saying perpendicular from the porch to the 115.30 foot dimension; I would agree it does not appear to be that.

**Linda:** Can I also add something? This is from the Town Assessor’s records. I put in yellow what I believe is the property. The street has a configuration that I recommended that we all should take a look at, because there's a sharp turn around this area. I would be curious to know wither public safety officials would have an opinion on adding a garage here. I also want to point out the house across the street, where the house is in the roadway. I offer this as additional information.

**Jim:** There is a letter from a neighbor asking for a site visit. What we often suggest to the applicant if there is something that looks like a variance that they may want to retain someone to look the applicator over and come in and make an argument that would persuade us. There is a request asking for a site visit. It's from Molly Upton, dated June 26th, who is sitting in the audience.

**Richard:** I want to address the safety issue, to which I'm sensitive. What we are talking about is building a structure on the physical area were we park our cars. The property will remain the same. There will be no safety risk in building the garage. In fact I have a gravel driveway. I don't know if you're aware of what you're supposed to when snow blowing a gravel driveway. You're supposed to put down an ice pack and then snow blow the driveway. I have a six year old and a three year old, and I would like to park the cars near to the house, which will enhance the safety for my family more than anything.

**Linda:** Can I ask about your gravel driveway? Do you have a curb cut?

**Richard:** I don't think there is a curb at all

**Jim:** There are no sidewalks from the photos

**Jonathan:** I would suggest a couple of things, as Jim says: 1. A site visit and 2. The application on its face indicates that we are creating a new non-conformity. The recommendation is to take another look at the application and maybe consults an architect or legal counsel. What we would like is to be able to work with you to give you the relief you are looking for but, it's going to be a much easier process if we could do it under a special permit standard rather than seeking a variance, which is going to be very hard to meet. Looking at the application, you're asking for a variance. There may be a way, after speaking with legal counsel, to look at the site plan as Mr. White indicated; I don’t know whether you need to be conforming with respect to the setbacks to both streets, or if conformity for one is sufficient. I also don't know if you are currently in compliance with the setback on Lakeshore Drive, because the measurement is not in the site plan. I would recommend that before we take further action we do the site visit and you consider how the application is formulated. We can move forward, but it's up to you.

**Richard:** I would like to move forward in the way that makes the most sense to the board. I would like to playback what the board recommendations are again

**Jonathan:** I recommend you talk to an architect or legal counsel to review your application to see if there is a way to amend it, so that you can come before us seeking a special permit. If we treat it as a variance, it is a higher hurdle to overcome. It may have to be variances, I don't know the answer to that and I'm not authorized to give legal advice.

**Richard: J**ust for my own edification, what is the threshold that places you in variance or special permit?

**Jonathan:** It's a creation of a new non-conformity. The issue is, on the face of the application it says you are currently in compliance with the front yard setback. Your proposed new front yard setback will bring you into non­compliance.

**Thom:** Sullivan Conor & Associates might be able to determine this, because looking at the application; it appears as though the front yard is currently non-conforming, in which case you would be is seeking an extension of that nonconformity. In terms of understanding the difference between the two standards, a variance asks for permission to create a non-conforming condition were one doesn't exist, whereas a special permit allows an expansion of an existing non-conforming. I think the engineers should add that to the site plan or reformat the site plan.

**Linda:** Is it the case that you have to come forward that many feet? We want to see a more complete layout. The Assessor’s map is not that detailed. For public safety purposes, you may want to show us; I don't know if you know the street, but it’s not a straight road, and the line of sight is not good.

**Jim:** There are a number of factors relating partly to the zoning by-laws and partly to the state law on variance. It's a fairly complicated matter. This does not sound like a straightforward application, with all the facts in question. It may be beneficial to speak to someone with experience before the Zoning Board,

Whether it's a lawyer, architect or contractor, to explain the factors. You may have to redesign something or not.

**David:** Also, something I would want to know is the vegetation impact. That would be something we would want to look at and just for further reference if there is a site visit we would want that staked out.

The board agreed to site visit 9:00 am and a continued hearing at 7:15 pm on July 11, 2018.

##

Verizon **Wireless** - Jonathan reads the legal description

**Jonathan:** Good evening Sir

**Chris S:** At our last meeting the board requested several pieces of information that we submitted a week and a half ago. I trust that everyone has that packet, A through E. The bottom line here really is that what we are proposing from what I can tell in all the evidence I've submitted is this is almost invisible; it has very little visible impact. What I would volunteer is to do a balloon test, so that everyone can see what this would look like at various heights from his or her vantage point. When we do our photo simulation, which is included in tab four in your packet, we are a little bit limited to where we can't go into people's homes or backyards. We are constrained to a public right of way. It makes the renderings fairly accurate but, just the same, I think it's good for everyone to really get to look at it from wherever they want. I ask the board to allow us to do a balloon test. I think it's a requirement in your wireless district, and to schedule a date so that all the members of the public know when that date is.

**Jonathan:** Any questions or comments from the board members?

**Linda:** As far as where it’s visible from, I believe that a segment of the river is also a wild and scenic river destination. Would there be a possibility that we could see what it looks like from the river?

**Aida:** Is there some place where we could walk and see it?

**Linda:** I don't think so; I also wanted to offer something to you. I requested a map so we could see where the other parcels were that might be alternatives. This is from another project, but it features the Eversource right of way which is now the Danforth project. I know you had indicated that there were some difficulties getting hold of them. This is before they built the condos there.

**Chris S:** There was a map included on Tab C. It was not as large. Usually it’s easier to look at online. When it comes down to the property owners in the vicinity, there are three as I said in the materials. You have the Brandon property, the Town of Framingham and the Federal government. The vast majority of the Town of Framingham properties and Federal Government property are wetlands, governed by federal law. That leaves you with Brandon Homes, as to which we weren't successful in getting a reply. I gave you the evidence of the times we reached out to them in that packet. In addition we did the radio frequency analysis that we hadn't done previously, to show that if we were able to site it at Brandon, it doesn't accomplish what this site accomplishes and it’s far more visible. At the end of the submission I gave you, I took photographs and you can see every single pole in the right of way from Framingham to the last pole which is very close to what we are proposing. It is very visible, whereas the site we are proposing is not that visible at all. In the photo simulation there is really one home on Stonebridge that you can see just the tip of the tower, and that house was uninhabitable at the time. We took the photos, the house was just built and that's at one hundred and forty feet. We had said previously that we can reduce the height and if we reduce the height to one hundred and twenty feet, it’s lower to the tree line, it’s just not visible and that's what made this location the best one. Because the primary impact we are trying to mitigate is the visual impact. Our job is to get as close to invisible as we can, it’s usually very difficult to be completely invisible.

**Jim:** Are you saying all the BECO towers are in wetlands, so they will not be viable alternatives?

**Chris S:** No, that is not within the search range, so the area that can supply the coverage where we have the gap here is pretty far away.

**Jonathan:** I'm looking at this email on June 14th from you to counsel, etc. I'm trying to understand, it's an Eligible Facility Request.

**Chris S:** That email was a separate point that you had raised, Mr. Chairman, regarding the possibility to contractually limit the height despite what federal law provides. I had my doubts as to whether that could be an enforceable contract. However, I talked about it with a few other people and we came up with a different way to accomplish the same objective. Because we have this regulation, section 6409 of the Act, provides any carrier can put an extension on a pole by right if it’s within certain parameters. It’s called an Eligible Facilities request.

Suggestion to hire an engineer to consult with the issues of radio frequency coverage, technology and the corridor and I propose David Maxson or Irving from IDK. Further suggestion to retain someone from K-P Law to advise and be present at the meetings. There will be balloon test done.

## Public comments and concerns please refer to Wayland Webcam. Procedural Meeting will be held July 24th 2018.

Meeting adjourned at 9:30pm

8/21/2018 April Leshore

 Date Minutes Approved Prepared by: April Leshore