

# City of Westfield

## ZONING BOARD OF APPEALS

Martin Newman, Chair  
Richard Sullivan III, Member  
Gary Bacchiocchi, Member  
Sofia Williams, Alternate

**April 27, 2016**

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The meeting was called to order by Chair Newman @ 7:00 p.m. Room 315, Municipal Building, 59 Court Street, Westfield, MA.

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- Members present  
 Members absent

Staff

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| <input checked="" type="checkbox"/> Martin Newman, Chair         | <input checked="" type="checkbox"/> Jay Vinskey, Principal Planner |
| <input checked="" type="checkbox"/> Richard Sullivan III, Member | <input checked="" type="checkbox"/> Christine Fedora, Clerk        |
| <input checked="" type="checkbox"/> Gary Bacchiocchi, Member     |  |
| <input checked="" type="checkbox"/> Sofia Williams, Alternate    |  |
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1. *Call to order:* Chairman Newman called the meeting of the Zoning Board of Appeals to order at 7:00 P.M. in Room 315, Municipal Building, 59 Court Street. Westfield MA. Members introduced themselves.

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2. *Public Participation:* Chairman Newman asked if there as anyone in the room who would like to address the Board regarding an item not on the agenda.

Mr. Robin Sheldon addressed the Board regarding a lot located on Roosevelt Avenue as to whether it could be a building lot under the infill ordinance. He noted one of the reasons he is inquiring is because the possible petitioner also owns the house next door to it so they would have to average together, he asked the Board if they felt this would be something worth pursuing?

Chairman Newman noted if it's close to the requirements it's worth trying but noted the Board would have to review it and noted it's unpredictable.

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3. Continued Public Hearings on the petitioners of:
- Demorris – Dimensional Special Permit – 34 Ward Rd.

The petitioner Diane DeMorris addressed the Board informing them she had E mailed the plan with the dimensions. Chairman Newman noted the hearing is still open and asked if there was anyone to speak in favor or against? Member Bacchiocchi inquired if this is an existing garage? DeMorris replied there is currently a single car garage and they would like to make it a double car garage.

Member Bacchiocchi MOTIONED, seconded by Sullivan to close the hearing. Chairman Newman noted he was hoping the Board would vote later in the evening, noting it would not be open to the public.

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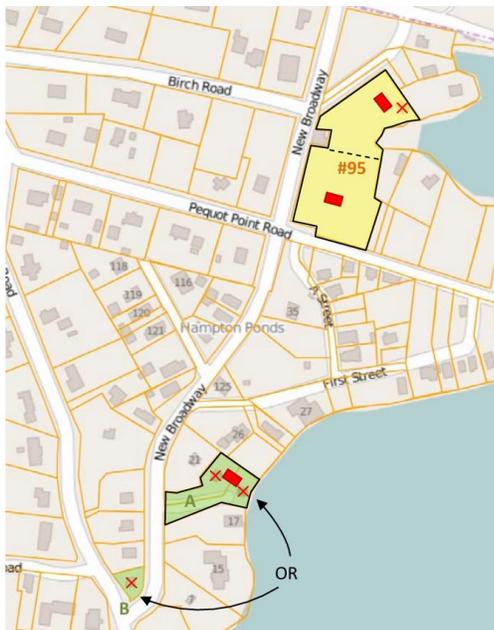
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Hampton Ponds Realty .

The Board reviewed the application as submitted. The application as presented to the Board referenced case # 2677 which approved a variance to divide a 31.040 sf lot with frontage on Long Pond Road and New Broadway, in exchange for merging 21 New Broadway with a previously combined 18 and 20 New Broadway. The applicant was seeking to amend Conditions # 2677 to substitute one of the following in exchange for the division of 105: either downgrade 8, 18 or 20 New Broadway to be a non-buildable lot, or merge 18 and 20, one vacant single family home on a , already gutted for demolition.

Vinsky informed the Board he prepared a flow chart which gives a better understanding of what the applicant is proposing and has proposed.



Variance relief granted: Divide 95 New Broadway into 2 lots (undersized)

Condition #1 Imposed (12-2-15), *summarized language:*

- A. 18 and 20 New Broadway shall be merged to form "One contiguous lot for not more than one dwelling."

~OR~

- B. The structure at 8 New Broadway shall be razed, with such property not to be used as a lot for dwelling purposes.

- × Demolished/extinguished dwelling  
■ Allowed/contemplated new dwelling

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A

OR



B

### 105 Long Pond (Case #2729)

Variance relief granted: Divide 105 Long Pond into 2 lots (undersized)

#### Proposed Amended Condition #1:

Such that the density of the neighborhood is not increased, and as offered by the applicant, prior to any building permit being issued for a second dwelling to be constructed at the subject 105 Long Pond Road or upon the lots created there from:

- A. Any one of the following structures shall be razed, with such property not to be used as a lot for dwelling purposes: 8, 18, or 20 New Broadway; or
- B. 18 and 20 New Broadway shall be merged to form "One contiguous lot for not more than one dwelling." Proof of recording of a plan (book and page) depicting this notation shall be provided to the Building Inspector and Assessor. Subject plan shall reference the book and page of this variance (amendment).

This condition shall not be satisfied by the same, or effectively the same, previously or subsequently exercised alternative used in the satisfaction of Condition #1 of Variance Case #2707, (95 Long Pond Road).

Continuation of Variance Case #2707, (95 Long Pond Road).

After a building permit is issued for the second dwelling to be constructed at the subject 105 Long Pond Road or upon the lots created there from, enforcement action may be taken against any subject property in (A) or (B) above, whichever is exercised, when not in compliance with the restrictions imposed by this condition.

- ✗ Demolished/extinguished existing dwelling
- Allowed/contemplated new dwelling

A lengthy discussion occurred with the members regarding this plan. The applicant stated he did not want to make a decision for the person who purchases the lots. Vinsky prepared a flow chart for the Boards review. He explained that if this is approved condition 27 from the previous decision will be replaced with this decision. Mr. Weise's concerns were that he wanted the same number of lots.

Mr. Weise explained the history from back in 2011, he explained he is trying to bring everything closer to the norm.

Members voiced their concerns that this was getting out of the norm, its getting confusing with merging some lots and razing other lots. They also voiced their concerns regarding how these records would be referenced at the Registry of Deeds when someone goes to look for the deeds? Mr. Weise felt there would only be 3 properties, only 3 addresses that would have to be searched for. Newman voiced concerns that there are more and more changes, at some point it could be a deal killer.

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Member Bacchiocchi felt in principal he was good with this idea but when it comes to carrying out making sure the number of houses are the same, he would feel better if the conditions were the same on both and variances cross referenced each other, when one option goes on one it gets the other one off.

Alternate Williams also voiced her concerns regarding title purposes, nothing would reference the cross reference at the registry, the cross reference will not show on the record at the registry. There is no way for the registry to determine that. Newman added it would create a problem. Weise noted that he's seen notations added for mortgage, can notation reference? Williams marginally can be added, no way to reference, Williams building will have to reference that. Williams could have in text, marginally reference other variance, can't monitor the enforcement of lots.

Discussion also regarding the fact Mr. Weise did not have a buyer yet and that they don't know what the buyer would want. Mr. Weise also noted that he didn't want to put something for sale if it's not a buildable lot. Members suggested to post it in the MLS as subject to approval, Williams also added she would be more comfortable with this process if there were a P & S agreement, she also suggested the applicant request an extension on the previous application.

Chair Newman felt if a buyer wants something different and comes back the Board has an option of saying no, there are strict rules on giving out variances and they are time consuming, he felt this is getting at the edge of unworkable. There will be no one running out there to enforce these. Alternate Williams also felt can't have another department responsible to enforce.

Chairman Newman explained the Board has a history of approving these variances and the Board has no problem with what the applicant was doing but felt the complexity of it is getting out of hand.

Vinsky asked if the Board was entertaining a withdrawal request? The applicant agreed if an extension is granted he would withdraw application.

Bacchiocchi MOTIONED, seconded by Sullivan to close the hearing. All in favor.

Williams MOTIONED, seconded by Sullivan to grant a 6 month extension to case 2677 for 6 months.

All in favor.

Williams MOTIONED, seconded by Sullivan to allow the applicant to withdraw.

All in favor.

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Kg Investments~Montgomery Road

Chairman Newman informed the Board there is a request to withdraw their application as well as letters from abutters and proceeded to read the letters.

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Bacchiocchi MOTIONED, seconded by Williams to approve the request to allow the withdrawal of the application. All in Favor.

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Chairman Newman read the notice into the record for:

*TODD LAMOUNTAIN who seeks a Section 3-50.4(5) dimensional special permit and/or variance relief from Section 3-50.5 for street line and side yard setbacks of less than 15 feet and/or from Section 4-30.1(a) for building separation of less than 10 feet to allow for construction of a detached garage. Subject property is 69 Prospect St. and is zoned Residence A.*

The applicant presented the Board members with the exact dimensions of the detached garage they would like to build as well as the dimensions. The Board members noted the farthest edge of the eaves should be used in the dimensions.

Questions?

In favor?

Opposed?

Williams MOTIONED, seconded by Sullivan to close the public hearing. All in favor.

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Quiles 276 Shaker Road

Chairman Newman noted he is not a voting member, no new information has been submitted and the Board should discuss the factors required for a variance to be issued.

Members Williams noted she has done some research and looked at this section of the zoning ordinance which referenced this type of an application. She noted the new lot conforms but does not have the square box requirement, she also noted if this had not been located in the aquifer zone it would have the adequate frontage, by reducing the lot it would be comparable to the other lots in the area, she did not think it would be a big problem and the concerns of the abutters could be addressed in the conditions. She also felt in the overall picture of what they will be doing it will be the most conforming lot in the area.

Vinsky noted the last time the Board had discussed possibly equalizing the lots? Williams replied yes, but that way there would be 2 non-complying lots. Vinsky informed the Board both would carry a variance either way.

Newman felt the fact that he is unable to divide the lot is not a hardship. When the zoning was changed to aquifer it was changed after all the other houses were there, if the Board doesn't approve then the applicant will have a lot that is 3 times the size of their neighbors. He then discussed how much of a detriment this

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would this cause? He felt this lot is still bigger than the rest of the smaller lots, if it wasn't for the presence of the other lots he would say the Board probably shouldn't approve. How can the Board say it's a detriment when all the other lots are non-conforming? As well as the fact the zoning was changed after the fact. He also noted he didn't see the detriment to the neighborhood but noted the hardship is the issue on the line. He noted it's not the clearest case but think it would be justifiable if approved.

Bacchiocchi inquired how would the hardship issue be addressed? Newman felt if the Board was in favor, it would be burdensome to have one lot far larger than anyone else's when the surrounding neighborhood is much smaller; he felt hardship and fairness are kind of related noting he was not saying to vote for or against.

Williams stated there are 3 elements to granting a variance, no detriment public, and not derogating from ordinance, she felt 2 of the 3 elements are clear.

Bacchiocchi felt the requirements of the zoning ordinance considering lots in the neighborhood are considerably smaller. Williams stated the new lot would conform except for the box. Bacchiocchi felt if the Board was to go with the 2 lots having 125 feet frontage it would be more sensible. Newman felt if the Board was to approve and leave equal frontage to both lots it will have more frontage than the rest of lots. Bacchiocchi inquired about the water runoff water issue of the abutter. Newman felt that would be addressed in the conditions.

Newman read the possible conditions and findings into the record noting the water runoff issue could be addressed in the conditions.

1. The two lots created from the subject parcel shall be of generally equal frontage (125') and area (1.67 acres).
2. The rear portion of each lot, meaning that area beginning not more than 250 feet easterly of Shaker Road and continuing to the rear lot line shall remain in its current natural vegetated state, with no pavements, structures, dumping, tree removal, lawn areas, etc. Such areas shall be indicated on the lot plan, recorded at the Registry of Deeds and clearly labeled: "Area to remain in natural vegetated condition; noncompliance subject to zoning enforcement action." Reference to this variance shall be included on the plan.
3. Three permanent bounds shall be installed, shown on the recorded plans and maintained to demarcate the western limit of the above described area, where it intersects with each lot line.
4. The zoning enforcement officer shall be afforded access, through each lot, to the above described area for compliance inspection purposes.

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5. To the extent practicable, Stormwater runoff from new impervious surfaces (roofed/paved areas) shall be routed through areas of natural vegetation, rain gardens, or otherwise made to be retained and infiltrated on site. Roof water may be routed directed to a drywell infiltration system. These infiltration components shall be maintained in proper functional order or replaced with equivalent measures.
6. Use of synthetic chemical fertilizers or pesticides for lawn care or landscaping is prohibited on the subject lots.
7. To compensate for the loss of green space, at least 4 large-growing shade trees (2.5" min. caliper at planting) shall be well-distributed, installed and maintained along the front yard area of the lots. Trees planted in the public street right-of way, with City approval, may satisfy this requirement.
8. This variance shall not be considered to be exercised until an application for building permit for the proposed house (Lot B) has been made.

Bacchiocchi MOTIONED, to approve the variance. All in favor.

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Diane Demorris

34 Ward Road

Chairman Newman felt the Board has granted these many times before and there has been no down size at all. There was no objection to it; no detriment to the neighborhood, a lot has changed in the area. Newman no problem. Sullivan also felt the same way, the house next door has the same thing, and it will be adding to the property values, there is no down side.

Newman read findings into the record.

DIANE DEMORRIS who seeks a **dimensional special permit** per Section 3-40.4(13) to allow for a side property line setback of less than 20 feet for construction of an attached garage. Subject property is 34 Ward Road and zoned Rural Residential.

1. No part of the subject garage or any appurtenances attached thereto, shall be closer to the side property line than 10 feet.

Sullivan MOTIONED to approve the Special Permit for Ward Road. All in favor.

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LaMountain

Chairman Newman felt that not being able to build a garage on residential lot is a hardship these days. The house was built in 71, in 45 years things have changed, people need garages, and in the last few years the Board has approved applications for garages noting they usually are not variances. He added he was comfortable with this in that the hardship, shape and topo and 3 streets are all unique. Most houses don't back into a street, there was no objection to the plan and it adds value to the property, many neighbors have garages. He felt it does not nullify from the ordinance, he did not see a problem.

Bacchiocchi also felt this will not cause any detriment to the neighborhood; he felt this would be better for everyone.

Alternate Williams agreed.

1. No part of the subject garage or any appurtenances attached thereto shall be closer to the abutter's property line than \_\_\_\_\_ feet, nor to the street line than \_\_\_\_\_ feet, or to the existing house wall than \_\_\_\_\_ feet.

2. *Specify location of garage (by narrative or sketch) ?*

The Board discussed and felt the dimensions should be as follows: 4.0 feet from the abutter's lot line, 1, 0 feet from the Reservoir Avenue lot line, and 5.0 feet from the existing house.

Williams MOTIONED, seconded by Sullivan to approve. All in favor.

Minutes.

The Board to meet next week if a petition comes in.

MOTION to adjourn at 9:30.

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APPROVED

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