

**TOWN OF BELMONT  
ZONING BOARD OF APPEALS**

2020 MAR 18 PM 2:45

**CASE NO.** 19-42

**APPLICANT:** Empire Management Corporation *(also owner.)*

**PROPERTY:** 774A (portion), 778, 782, 790 Pleasant Street

**DATES OF PUBLIC HEARING:** December 2, 2019  
January 6, 2020

**MEMBERS SITTING:** Nicholas Iannuzzi, Chair  
James Zarkadas, Vice Chair  
Andrew Plunkett  
Phil Ruggiero  
Andrew Kelley (Associate Member)  
Teresa MacNutt (Associate Member)

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**MEMBERS VOTING:** Nicholas Iannuzzi, Chair  
James Zarkadas, Vice Chair  
Andrew Plunkett  
Phil Ruggiero  
Andrew Kelley (Associate Member)

**Introduction**

This matter came before the Board of Appeals ("Board") of the Town of Belmont ("Town") acting as Special Permit Granting Authority under the Zoning By-Law of the Town of Belmont, Massachusetts ("By-Law") and Chapter 40A of the Massachusetts General Law ("Zoning Act").

The Applicant sought to expand an existing car dealership, Cityside Subaru, to accommodate the current requirements of the franchise. In connection with this, the Applicant sought the following two Variances and one Special Permit:

1. A variance is required to convert an existing conforming Two (2) story building to a non-conforming three (3) story building, the lowest level of the structure is a basement (55.84% of the foundation walls are covered) and is considered a story. The proposed addition is a third story addition (44.56% of the foundation walls will be covered).
2. A Variance is required to increase the height of the building from 32' conforming to 38' non-conforming.
3. A Special Permit is required to increase the lot coverage from 37.6% existing to 74.9% proposed.

The Board held a duly noticed public hearing that opened on December 2, 2019 and continued on January 6, 2020. The Applicant presented a proposal at the hearing and submitted architectural plans dated October 21, 2019, basement calculations dated January 21, 2019 and a zoning checklist dated October 10, 2019. Also, a letter from Subaru Of New England, Inc. was provided to the Board which described the current requirements necessary for the dealership to be eligible for a renewal of their lease.

A letter of support from James W. Flett Co. Inc., an abutter to the property was also presented.

*Land Design Collaborative  
Terrace North Suite 1  
45 Lyman Street  
Westborough, MA 01581*

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### **Proposal**

Brian Lafferty, Empire Management Corporation, introduced his colleagues and explained the need for the two Variances for the height of the building and the number of stories and the need for a Special Permit to increase the lot coverage. He noted that the proposed building would meet the FAR requirements. He explained that they needed to expand the existing facility in order to continue their Subaru dealership, whereas Subaru has requirements for added spaces for storage, number of spaces for cars, number of service bays, showroom area, and also to consolidate all service areas to better provide service to customers. He added that although the proposed did not fully satisfy the requirements of the franchisor, after 12 iterations of the plans, both them and the franchisor had come to an agreement that the proposed would be acceptable by both parties to continue the dealership with a new lease for 14 years.

Mr. Lafferty added that the criteria in the By-Law to be eligible for a variance relief has been met. First being the topography of land where the elevation on the street level is approximately eight to nine feet higher than the elevation of the rear of the building abutting the MBTA tracks. Second, the irregular shape of the lot has made it impossible to construct any additions to the rear of the property and the only option was to expand due east. He also noted that the proposed plan doesn't derogate from the intent of the by-law and that the front and back of the proposed building would have the same character as the existing and would be in keeping with the character of the neighborhood and the zoning district in which the property is located.

Jim Almonte, Landscape Architect, presented the proposed plan for the building, reviewed the footprint of the building, the lower level access, access to service reception, wash bays, vehicle storage and show room. He also reviewed the phasing of the buildings where services to customers will continue as usual while undergoing construction. He added that the proposed design will have 26 service bays as required by the franchisor whereas the existing is at two locations totaling 15.

Mr. Plunkett asked to see the details of the facility requirements from Subaru standards and asked what the minimum expansion will satisfy the Subaru's demands.

Mr. Lafferty noted that the proposed does not meet the requirements of Subaru's standards however they have an agreement with them to accept what was submitted as what was feasible to provide for a continued 14 year lease agreement and that Subaru will not accept anything less than what was proposed.

Mr. Iannuzzi asked for a landscape design plan. Mr. Yogurtian noted that upon the Board granting the relief sought by the applicant, the project will go through a Design and Site Plan Review process with the Planning Board.

Mr. Kelley asked what type of guarantee Subaru would offer that they would not change the requirements before the franchise agreement ends. Mr. Lafferty noted that it was a 14-year franchise agreement with Subaru.

Mr. Iannuzzi noted that with the two variances and special permit another entity might be able to build to this size and afterwards sell the building.

Mr. Lafferty assured to the Board that they were planning on remaining at this location as a Subaru dealership for a very long time and selling the property to another entity is not their intent.

Bob Kochem, a Cityside Subaru customer noted that he has had great experience with them and would like to see them continue the services they provide to customers and the community.

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Chris Kochem, Town Meeting Member, Precinct 8, retired FBE Administrator, noted that Cityside Subaru was a tremendous support of the FBE who has donated over \$100,000.00 to the Belmont Foundation of Education over the past six years and they really cared for the community. She spoke in support of the proposal.

As part of the application materials, the applicant submitted a summary of the requested variances and the special permit, and how the statutory criteria were fulfilled. Including:

**VARIANCES:** The need for the variance is driven by the unique topography of the land, which cannot be modified or significantly altered.

If the property did not have such a severe slope from Pleasant Street to the railroad tracks, the proposed building could comply with the requirements of the bylaw. As a result of the severe topography, the proposed building does not have 60% of the "clear height" of the bottom floor, covered with earth (not below grade). Consistent with the bylaw, what would normally be considered a "cellar", becomes a "basement" and therefore a "story", pursuant to the Belmont Zoning Bylaw.

Therefore, because of the unique topography of the subject lot, and the specific language of the Belmont Zoning Bylaw regarding "basements/cellars", the proposed building is considered a 3 (three) story building, despite appearing to be a 2 (two) story building to anyone who views the building from a public street

The granting of the variance will not affect generally the zoning district. The building will appear to be a two (2) story building from the street side and as a three (3) story building from the rear (railroad side). The view at the rear of the building will be at least 200' feet from the closest residential building and screened from that property by an existing landscaped buffer. The rear properties are also divided from the subject land by the railroad tracks, a parking lot and other municipal properties that include Belmont Water, Light, and the DPW Yard and Garages.

The requested relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law, as if the grade was different (or the bylaw permitted changing the grade) the basement would be considered a "cellar", not a "basement" and the view of the rear of the building would be almost identical to the proposed view.

**SPECIAL PERMIT:** Pursuant to the "Gale vs. Gloucester" decision, the reliefs requested by the Applicant are by Special Permits.

The By-Law provides that the Board may issue a Special Permit to reconstruct, extend, alter, or change a nonconforming structure "only if it determines that such reconstruction, extension, alternation, or change does not increase the nonconforming nature of said structure or create a new nonconformity and shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood and that it shall be in keeping with the character of the neighborhood in which it is located." By-Law § 1.5.3.

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The Special Permit relief is requested due to the increase of the lot coverage. The Board considered that as a thriving business in Town surrounded by similar uses in the the same neighborhood as the Town Yard at the North and Flett Company at the east, the proposed additional lot coverage is deemed necessary and would not be detriment to the neighborhood in which it is located.

### **Conclusion**

Mr. Zarkadas summarized and confirmed the Zoning By-Law criteria requirements for allowing the issuance of variances were met; the site was severely impacted topographically, the shape of site was irregular (like a bowling alley, long and narrow) and it created multiple hardships, and furthermore that the proposed will enhance the character of the business district in which it is located and will not be more detrimental to the neighborhood than the existing structure.

Accordingly, **upon motion duly made by Jim Zarkadas and seconded by Nickolas Iannuzzi, the Board voted 5-0 to grant the two Variances and one Special Permit as requested.**

For the Board:

Dated: March 18, 2020



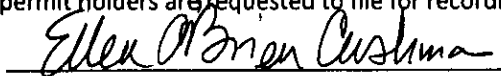
Ara Yogurtian  
Assistant Director  
Office of Community Development

### **CERTIFICATION BY TOWN CLERK**

I, Ellen O'Brien Cushman, hereby certify that twenty (20) days have elapsed after the decision was filed in the office of the Belmont Town Clerk on March 18, 2020, and further I certify that no appeal has been filed with regard to the granting of said Two (2) Variances and One (1) Special Permit with Zero (0) conditions.

Statutory appeal periods, and thus the issuance of Certificates of No Appeal, have been temporarily affected by Court Standing Orders, available at [www.mass.gov/guides/court-system-response-to-covid-19](http://www.mass.gov/guides/court-system-response-to-covid-19). Applicants, abutters and interested parties should consult the Standing Orders to determine their next actions. Any decision by a permit holder to proceed is at their own risk, and the permit holder is urged to consult their own legal counsel.

Under Section 17 of Chapter 53 of the Acts of 2020, the requirement to record permit decisions with the Registry is suspended for so long as the Registry is "closed or subject to rules and procedures restricting public in-person access." However, such recording will still be required upon the full reopening of the Registry. The Middlesex County Registry of Deeds continues to accept filings by postal mail during this period, and permit holders are requested to file for recording through this method to the extent possible.



Ellen O'Brien Cushman, Town Clerk  
Belmont, MA

August 15, 2020