



ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

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 WELLESLEY MA 02458
 2018 JUN 21 P 2:55

ZBA 2018-42
 Petition of Megan & David Boffa
 40 Bay State Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, June 7, 2018, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Megan & David Boffa requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that construction of a two-story addition with less than required rear yard setbacks, on an existing nonconforming structure with less than required front yard, rear yard and right side yard setbacks, on a 10,605 square foot lot in a Single Residence District in which the minimum lot size is 15,000 square feet, at 40 Bay State Road, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On May 2, 2018, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing were David Himmelberger, Esq., Keri Murray, Architect, Megan and David Boffa, the Petitioner.

Mr. Himmelberger said that the request is for a special permit/finding. He said that questions were raised after the application was submitted with regard to the plot plan, the deed and the extent to which there was a road or right of way that went through the property. He said that those issues should not change things significantly with respect to the request that is before the Board. He said that the Applicant is seeking a special permit to construct a 14 foot by 18 foot two-story addition to a pre-existing nonconforming structure. He said that the lot size is pre-existing nonconforming and is shown on the plot plan as 10,605 square feet in an SR 15 District. He said that it has a rear setback of 6.9 feet, a front yard setback of 28.9 feet, and a left side yard setback of 15 feet, all of which will remain unchanged.

Mr. Himmelberger said that the deed to his clients referenced an earlier deed from 1952 that in turn referenced an earlier deed from 1942 that showed the lot at 10,605 square feet, subject only to a 45 foot right of way that was at some point known as "Pineway" upon which people were able to pass and repass. He said that in 1942 there was fee ownership of 10,605 square feet. He said that in 1952 the town took a portion of the property for the construction of Bay State Road. He said that when the town took this portion of the property, as shown on a plan, it took an area of 3,218 square feet, which differs from the original right of way that was owned in fee. He said that, as of 1952 with this taking, the lot was reduced by 3,218 square feet to 7,387 square feet, still remaining nonconforming.

Mr. Himmelberger said that the plot plan that was submitted shows the original lot size at 10,605 square feet. He said that, in fairness to the Surveyor, while the taking has a narrative and an instrument was

recorded at the Registry, there was no plan of record. He said that the taking plan that Mr. Himmelberger distributed to the Board was never recorded at the Registry of Deeds but was accepted by the town. He said that the physical taking was recorded, as well as the narrative with the metes and bounds but not the plan. The Chairman asked if the narrative referenced the plan. Mr. Himmelberger said that it did not.

Mr. Himmelberger said that another unusual aspect that contributed to the error in the deed was the fact that ownership of the property continued within the same family from 1942 until 2001, at which time the first deed out since 1952 incorrectly referenced the 1942 deed description.

Mr. Himmelberger said that this is a 7,387 square foot lot in a 15,000 square foot Single Residence District. He said that, whereas the footprint of the proposed addition of 252 square feet remains the same, the percentage of lot coverage changes. He said that when the lot was understood to be 10,605 square feet, lot coverage of 11 percent increase would increase to 14 percent. He said that when the correct size of the lot is applied, the actual lot coverage of 15.8 percent will increase to 20 percent, which is well below the 25 percent limit for homes on lots with less than 10,000 square feet. He asked that the Board consider the application tonight with a condition that a corrected plot plan be submitted. He said that the plot plan that was originally submitted does show the correct front yard setback of 28.9 feet to the edge of the taking for Bay State Road. He said that what was taken for Bay State Road does not have any implication with regard to the proposed addition to the left rear of the house.

Mr. Himmelberger said that the Planning Board, in recommending approval, felt that the scale and design of the addition would integrate seamlessly with the existing structure and reasonably well with other dwellings in the neighborhood. He said that this is a beautiful home and the Applicants are to be commended for retaining it and not seeking to start fresh. He said that they are seeking to add this modest 252 square foot addition over two floors with a basement. The Chairman said that the Planning Board recommended approval when they were under the impression that it was a larger lot than it is.

The Chairman said that it appears that the homeowner may be encroaching into the right of way. Mr. Himmelberger said that it is not dissimilar from virtually every other home in Wellesley where the pavement ends shy of the right of way.

The Board asked about the width of the taking. Mr. Himmelberger said that it is 40 feet, which is typical. He said that the extent of the 40 foot right of way had previously been established through the deed back in 1926 for the Pineway, which was owned in fee. He said that when the new 40 foot Bay State Road taking was made, a portion of it was off the property. He said that Bay State Road is off of the original property.

The Board said that the dimensional table on the plot plan should be adjusted, as it shows the proposed building height as, "to be determined." Mr. Himmelberger said that the height of the addition will be less than the existing house, which is 28.9 feet. He said that they will provide that calculation, as well as the lot coverage expressed in square feet.

The Board asked if a TLAG calculation was done. Mr. Himmelberger said that it was not. He said that the Town lists the Total Living Area (TLA) as 1,936 square feet and the addition is 504 square feet, which will be well under 3,600 square feet. He said that they will submit a TLAG calculation.

Ms. Murray said that she was hired to design an addition on this beautiful Tudor style home. She said that the goal is to maintain the original character of the house and preserve as much of it as possible. She said that the program spaces that they were interested in expanding or better utilizing were situated on the lot where there was more room to put an addition. She said that there will be 38 feet to the property line. She said that they tried to make the addition as small and modest as possible but still satisfy the needs of the client. She said that it is a three-bedroom house. She said that they were looking to create a larger bedroom on the second floor for a master type space. She said that the existing kitchen on the first floor is the smallest room in the house and her clients wanted to expand that living space. She said that they designed the addition to look like it has always been there. She said that they maintained a similar style on the dormers. She said that the new ridge line will not exceed that of the existing house. She said that it will relate to the other side of the house with a slate roof, brick siding and matching windows. She said that there are one or two copper roof canopies on the back that they will replicate. She said they were looking to enhance the overall aesthetic of the house while maintaining a modest footprint.

A Board member said that he is familiar with this home. He said that the proposed location is a perfect place to put the addition. He said that it should not have any negative impact on the neighbors. He said that the addition will be consistent with the masonry that is there now and appears to be nicely done.

A Board member asked about the driveway. Ms. Murray said that it will stay the same. Ms. Boffa said that they took the driveway up a couple of years ago and put in grass.

A Board member asked about the brick structure at 25 Pine Street. Ms. Boffa said that is a garage. Mr. Himmelberger said that the McKinney's were supportive of the plans.

Lou Titus, 32 Bay State Road, said that he is the abutter to the left side. He said that he likes the layout. He said that the Boffa's are great neighbors. He said that previously in the hearing he heard a comment about a special permit not being allowed for nonconforming lots. The Chairman said that that the term, "pre-existing" refers to pre-existing enactment of the Zoning Bylaw and "nonconforming" means that it does not comply with the current bylaw. He said that a special permit is required to alter or amend pre-existing nonconforming structures. He said that the standard of review is whether the proposed renovation is substantially more detrimental to the neighborhood than the current nonconformity. He said that a variance creates a new nonconformity and is subject to a totally different legal standard. Mr. Titus said that it is good that the Boffa's will meet all of the criteria.

Statement of Facts

The subject property is located at 40 Bay State Road, on a 7,387 square foot lot in a Single Residence District in which the minimum lot size is 15,000 square feet, with a minimum front yard setback of 28.9 feet, a minimum rear yard setback of 6.4 feet, and a minimum right side yard setback of 15 feet.

The Petitioner is requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that construction of a two-story addition with less than required rear yard setbacks, on an existing nonconforming structure with less than required front yard, rear yard and right side yard setbacks, on a 7,387 square foot lot in a Single Residence District in which the minimum lot size is 15,000 square feet, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Letter to Zoning Board of Appeals, dated 5/1/18, from Megan & David Boffa, a Plot Plan, dated 4/30/18, stamped by Elliott J. Paturzo, Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated April 2018, Average Grade, dated 5/1/18, and renderings, prepared by Keri Murray Architecture, and photographs were submitted.

On June 4, 2018, the Planning Board reviewed the petition and recommended that a special permit be granted.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The subject structure does not conform to the current Zoning Bylaw, as noted in the foregoing Statement of Facts.

It is the opinion of this Authority that although construction of a two-story addition with less than required rear yard setbacks, on an existing nonconforming structure with less than required front yard, rear yard and right side yard setbacks, on a 7,387 square foot lot in a Single Residence District in which the minimum lot size is 15,000 square feet is increasing a nonconformity, such increase shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for construction of a two-story addition with less than required rear yard setbacks, on an existing nonconforming structure with less than required front yard, rear yard and right side yard setbacks, on a 7,387 square foot lot in a Single Residence District in which the minimum lot size is 15,000 square feet, subject to the following conditions:

1. A revised plot plan shall be submitted that is stamped and signed by a land surveyor and shows correct dimensions.
2. The revised plot plan shall indicate that proposed lot coverage will be under the maximum allowed.
3. The revised plot plan shall indicate the proposed building height.
4. The revised plot plan shall show the taking and indicate the location of it on the plan.
5. A TLAG Affidavit shall be submitted that indicates that the total dimension is less than the threshold for Large House Review in a 15,000 square foot Single Residence District.

The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed constructions plans.

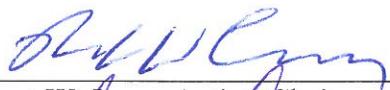
If construction has not commenced, except for good cause, this Special Permit shall expire two years after the date time stamped on this decision.

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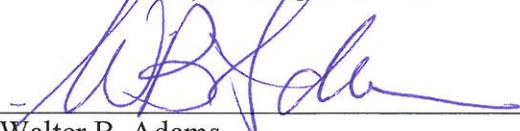
ZBA 2018-42
Petition of Megan & David Boffa
40 Bay State Road

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1 2010 JUN 21 P 2:53

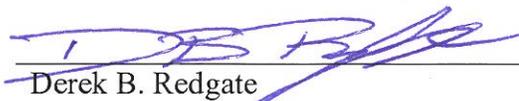
APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.



Robert W. Levy, Acting Chairman



Walter B. Adams



Derek B. Redgate

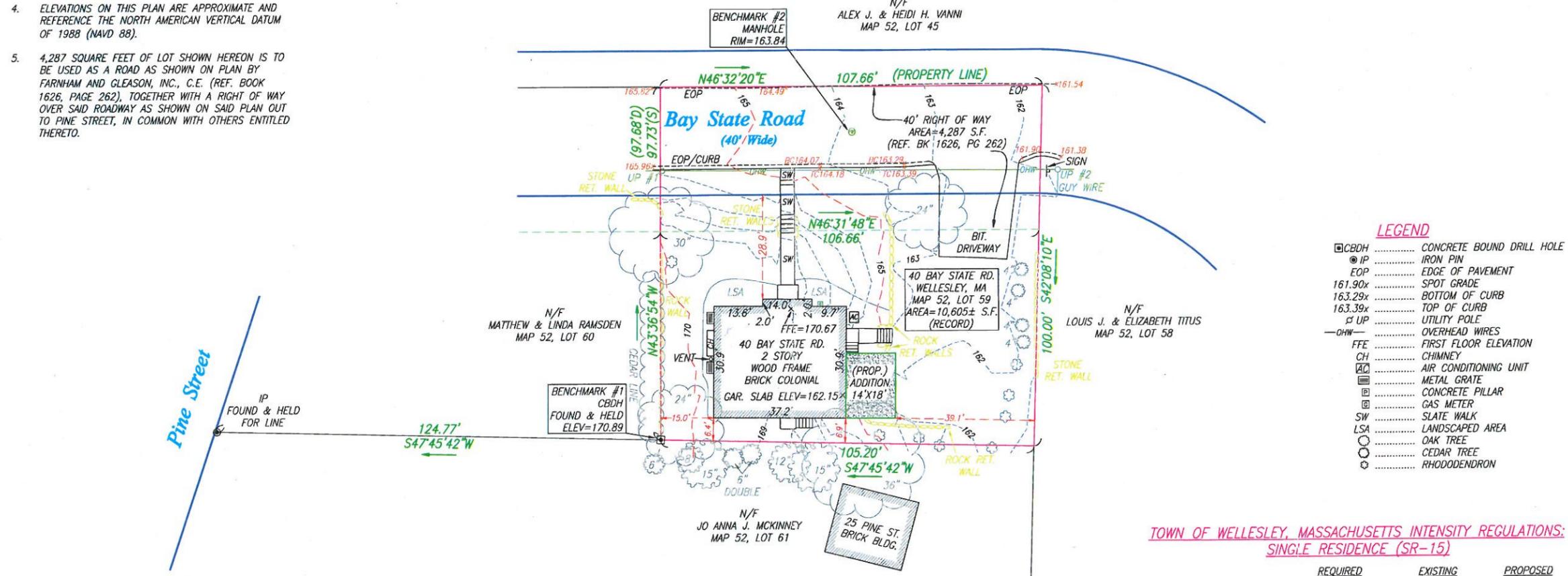
cc: Planning Board
Inspector of Buildings
lrm

NOTES

- SUBJECT TO ANY STATEMENT OF FACT AN UP-TO-DATE ABSTRACT OF TITLE WOULD DISCLOSE.
- SUBJECT TO ALL RIGHTS, EASEMENTS, COVENANTS OR RESTRICTIONS OF RECORD.
- UNDERGROUND UTILITIES, STRUCTURES AND FACILITIES, IF ANY, HAVE BEEN SHOWN FROM SURFACE LOCATIONS AND MEASUREMENTS OBTAINED FROM A FIELD SURVEY AND RECORD LOCATIONS, THEREFORE THEIR LOCATIONS MUST BE CONSIDERED APPROXIMATE ONLY. THERE MAY BE OTHER UTILITIES WHICH THE EXISTENCE OF ARE NOT KNOWN. SIZE, TYPE AND LOCATION OF ALL UTILITIES AND STRUCTURES MUST BE VERIFIED BY PROPER AUTHORITIES PRIOR TO ANY AND ALL CONSTRUCTION. CALL, TOLL FREE, DIG SAFE CALL CENTER AT 1-888-344-7233 SEVENTY-TWO HOURS PRIOR TO ANY EXCAVATION.
- ELEVATIONS ON THIS PLAN ARE APPROXIMATE AND REFERENCE THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88).
- 4,287 SQUARE FEET OF LOT SHOWN HEREON IS TO BE USED AS A ROAD AS SHOWN ON PLAN BY FARNHAM AND GLEASON, INC., C.E. (REF. BOOK 1626, PAGE 262), TOGETHER WITH A RIGHT OF WAY OVER SAID ROADWAY AS SHOWN ON SAID PLAN OUT TO PINE STREET, IN COMMON WITH OTHERS ENTITLED THERETO.

REFERENCES

- DEED REF: NORFOLK COUNTY REGISTRY OF DEEDS BOOK 29094, PAGE 4
- PLAN REF: PLAN ENTITLED "PLAN OF LAND WELLESLEY, MASS. (NORFOLK COUNTY)", PREPARED BY STAMSKI AND MCNARY, INC., DATED MARCH 11, 1986, PLAN 427 OF 1986, PLAN BOOK 335
- PLAN ENTITLED "PLAN AND PROFILE OF BAY STATE RD. & COMMONWEALTH PARK WELLESLEY, MASS. OWNED BY ROSCOE F. & ALICE E. JENKINS", PREPARED BY ROWLAND H. BARNES & CO. - CIVIL ENGRS, PLAN APPROVED 10-16-45, PLAN 855 OF 1947, PLAN BOOK 143
- PLAN ENTITLED "PLAN OF LAND IN WELLESLEY, MASS. OWNED BY WILLIAM H. PARTRIDGE", PREPARED BY FARNHAM & GLEASON, INC., CIVIL ENGINEERING, DATED NOVEMBER 1924, BOOK 1626, PAGE 262



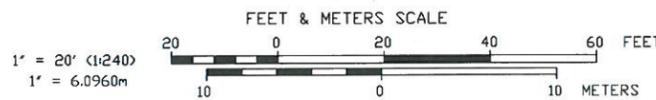
LEGEND

- CBDH CONCRETE BOUND DRILL HOLE
- IP IRON PIN
- EOP EDGE OF PAVEMENT
- 161.90x SPOT GRADE
- 163.29x BOTTOM OF CURB
- 163.39x TOP OF CURB
- UP UTILITY POLE
- OHW OVERHEAD WIRES
- FFE FIRST FLOOR ELEVATION
- CH CHIMNEY
- ACU AIR CONDITIONING UNIT
- MG METAL GRATE
- CP CONCRETE PILLAR
- GM GAS METER
- SW SLATE WALK
- LSA LANDSCAPED AREA
- OAK TREE
- CEDAR TREE
- RHODODENDRON

TOWN OF WELLESLEY, MASSACHUSETTS INTENSITY REGULATIONS: SINGLE RESIDENCE (SR-15)

	REQUIRED	EXISTING	PROPOSED
MINIMUM LOT AREA	15,000 S.F.	10,605± S.F.	N/A
MINIMUM FRONTAGE	60'	106.66'	N/A
MINIMUM FRONT YARD WIDTH	60'	106.1'	N/A
MINIMUM FRONT YARD DEPTH	30'	28.9'	N/A
MINIMUM SIDE YARD WIDTH	20'	15.0'	N/A
MINIMUM REAR YARD DEPTH	15'	6.4'	N/A
MAXIMUM LOT COVERAGE	25%	11%	14%
MAXIMUM BUILDING HEIGHT	3 STORIES/45'	2 STORIES/26'	TBD
MAXIMUM BUILDING HEIGHT OF ADDITION	3 STORIES/36'	N/A	2 STORIES

(SEE TOWN OF WELLESLEY ZONING BYLAW, SECTION XX)



ZONING DESIGNATION:
TOWN OF WELLESLEY ZONING DISTRICT SINGLE RESIDENCE (SR-15)

ASSESSORS REFERENCE:
MAP 52, LOT 59

I CERTIFY THAT THIS PLAN IS BASED ON AN ACTUAL FIELD SURVEY PERFORMED ON THE GROUND ON JANUARY 3, 2018, AND THE LATEST PLANS AND DEEDS OF RECORD.

I CERTIFY THAT THE SUBJECT DWELLING SHOWN LIES IN A FLOOD ZONE "X" AS SHOWN ON PANEL 9 OF 430, MAP NUMBER 25021C0009E, HAVING AN EFFECTIVE DATE OF JULY 17, 2012.

REVISIONS

DATE	DESCRIPTION

FIELD: RJC/BD
CALCS: EJP/SMI
DRAWN BY: SMI
FIELD EDIT: N/A
CHECKED: EJP
APPROVED:
JOB #: 171609

4/30/18
PROFESSIONAL LAND SURVEYOR DATE



A.S. Elliott Associates
Professional Land Surveyors
P.O. BOX 85 ~ HOPEDALE, MASSACHUSETTS
(508) 634-0256
www.aselliott.com

Existing Conditions
Plan of Land Showing
Proposed Improvements
40 BAY STATE ROAD
WELLESLEY, MASSACHUSETTS
PREPARED FOR: MEGAN BOFFA
SCALE: 1"= 20' DATE: APRIL 26, 2018