



ZONING BOARD OF APPEALS

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

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ZBA 2019-35
Petition of Charles Kraus
8 Lawrence Road

2019 APR -2 PM 3:00
TOWN OF WELLESLEY
ZONING BOARD OF APPEALS

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, March 7, 2019 at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Charles Kraus requesting a Special Permit/Finding pursuant to the provisions of Section XIVE, Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing nonconforming detached garage with less than required right side yard setbacks, and construction of an attached one-car garage with living space above and construction of a two-story addition with less than required right side yard setbacks, on an existing nonconforming structure with less than required front yard and right side yard setbacks, on a 6,202 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, in a Water Supply Protection District, at 8 Lawrence Road, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On February 1, 2019, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Present at the public hearing were David Himmelberger, Esq., and Charles Kraus, the Petitioner.

Mr. Himmelberger said that the request is for a special permit to make an addition to a pre-existing nonconforming structure on a pre-existing nonconforming lot. He said that the addition will maintain the existing elevation of the ridge height. He said that they will remove a pre-existing nonconforming garage that currently sits in the rear setback.

Mr. Himmelberger said that the Petitioner was previously before the Board, at which time the Board expressed concern about the bulk of the house. He said that the previously proposed Total Living Area plus Garage (TLAG) of 3,952 square feet was reduced to 3,526 square feet, which is below the threshold for the district. He said that the rear left of the addition was cut back and inset to reduce some of the mass and add more interest on that side. He said that a number of letters from neighbors were submitted, including the home to the right at 19 Willow Road, the home to the rear at 4 Dorset Lane, across the street and to the side, all of which support the project.

Mr. Himmelberger asked that the Board issue a finding that the proposed construction will not be substantially more detrimental to the neighborhood than the pre-existing nonconformities. He said that a nonconformity at the rear will be eliminated. He urged the Board to construe the bylaw as it is written, namely, if on a pre-existing nonconforming structure there is a proposed addition that is nonconforming, the determination is to whether that nonconformity will be substantially more detrimental. He said that the bylaw is not written to say that any addition may not extend an existing nonconformity. He said that on February 8, 2019, the MA Supreme Judicial Court issued an opinion on Maria Bellalta v Zoning Board of Appeals of Brookline and that case is directly on point to what he had previously argued. He said that

the Wellesley Zoning Bylaw (ZBL) closely tracks the language in G.L. Chapter 40 A, Section 6. He said that the Court said that a local bylaw cannot circumvent or trump Chapter 40A, Section 6. He said that it comes down to a determination by the Board as to whether the proposed addition is not substantially more detrimental to the neighborhood than the existing nonconforming structure. He said that when considering the neighborhood, it is important to be mindful that the immediate abutters do not see it as an issue. He said that the Petitioner took the Board's concerns into consideration and reduced the TLAG and the scale, resulting in a seamless addition and a very attractive house.

A Board member said that he found the plot plan to be very confusing. He asked if a retaining wall will be relocated. Mr. Kraus said that the retaining wall that is closest to the house will be relocated. He said that the retaining wall on the left side near the air conditioners is existing and will remain.

A Board member said that it is a small lot and he was troubled by how close the new structure will be to the neighboring property. He said that the addition will be much higher but will be looming over a garage, not a house. He said that it is good that the Petitioner spoke with the neighbors and it is clear that they do not have a problem with it.

The Chairman said that he looked at the relationship of the size of the lot and the increase in the house. He said that, as proposed, this would be the most intensive use of land in the area by quite a bit. He said that he was also concerned about allowing the structure to be so close to the lot line rather than in the middle of the lot. Mr. Himmelberger said that the lot is a parallelogram. He said that 19 Willow sits forward of this addition. He said that the addition will be close to the garage at the rear and below the main house at 19 Willow. Mr. Kraus said that the garage at 19 Willow is mostly underground at the rear and the side, which contributes to the looming nature of his addition.

The Chairman said that the average Total Living Area (TLA) for the 19 or so properties on Lawrence Road is 1,759 square feet. He said that the proposed TLA will be more than double that and the proposed TLAG will be even bigger. Mr. Himmelberger said that 8 Lawrence is at the intersection with Willow Road. He said that taking a larger view on Willow Road, there are houses there with TLA's of 3,333, 4,960, and 3,350 square feet. He said that the proposed house will not be a teardown. He said that this should be the type of project that the Zoning Board encourages or generally sees as a positive rather than a negative.

The Chairman said that Mr. Kraus put together something that is architecturally creative but questioned when it becomes more detrimental when coupled with a small lot and a large house on a small lot. Mr. Himmelberger said that this house on this lot with the proximity to the neighbor to the right facing the house and to the rear, will not be substantially more detrimental to the neighborhood. He said that the project will result in an improvement by removing a nonconformity in the rear.

A Board member said that the Planning Board believes that a variance is required. He said that a long standing policy of this Board is that the petition would be treated as a variance. He said that he is familiar with the Brookline case and is not sure how that would fit with this one. He said that the proposed change in the Brookline case would not change the footprint or the outside appearance of the house. He said that this is different because there will be greater impact to the neighborhood. Mr. Himmelberger said that before the Brookline case came out, he argued that, based on the clear language in the Wellesley bylaw, there is no limiting language that says that you do not get a special permit if you intensify the nonconformity. He said that the Board may have had a practice of imposing something that was not in

the bylaw, namely that you should not make a nonconformity worse, but there is no basis in the bylaw or as indicated by the SJC in Chapter 40A, Section 6. He said that case law changes and Brookline is the most current expression of what constitutes an interpretation of Chapter 40A, Section 6. He said that the Brookline case does review the existing case law and finds that, in accordance with Chapter 40A, after determining if there is an intensification or even a new nonconformity on a pre-existing nonconforming structure, the only determination for the Board is whether the proposed structure will be substantially more detrimental to the neighborhood. The Board said that the Chairman should speak with Town Counsel for his opinion on this matter.

March 19, 2019

Present at the public hearing were David Himmelberger, Esq., and Charles Kraus, the Petitioner.

The Chairman said that he spoke with Town Counsel and they discussed the Bellalta v Brookline case. He said that Town Counsel recommended a procedure for the Board to follow which is more or less consistent with Mr. Himmelberger's argument. He said that the Board has to decide and make a finding on whether any nonconformity was extended or intensified and, if so, a special permit is the appropriate relief. He said that the Board then has to make a determination whether it considers the proposed structure to be substantially more detrimental than the existing structure.

Mr. Himmelberger said that he appreciates that the finer lines that were recently set down by the SJC in that most recent case do reflect a slightly different practice from how this Board has handled similar situations in the past. He emphasized the fact that the Board has always retained the ultimate authority to make a final determination as to whether or not the proposed intensification of the nonconformity is substantially more detrimental to the neighborhood than the pre-existing nonconforming structure.

A Board member asked Mr. Himmelberger to identify the nonconformities being extended and explain the basis of his statement that the proposed alterations are not substantially more detrimental to the neighborhood. Mr. Himmelberger said that an existing nonconforming garage that is within 3 feet of the rear property line where 10 feet is required and within 2.5 feet of the side property line where 20 feet is required will be eliminated. He said that the existing home is also nonconforming with an 18.6 foot right side yard setback where 20 feet is required. He said that the nonconformity will be extended or intensified because the proposed addition will move closer to the side property line by a considerable amount, bringing it 3.5 feet from the property line.

A Board member said that the Bellalta v Brookline case went to great lengths to identify the fact that the neighbors felt that it was not more detrimental, as is the case here. He said that the lot was very small but there were several other houses in the neighborhood of similar size and volume as the proposed alteration. Mr. Himmelberger that this petition is to extend an existing nonconformity. He said that in the Brookline case the Court said that because it was an intensification, it did not need to reach the issue in the Chatham case that a new nonconformity was created. He said that the language does allow for new nonconformities. He stressed that they will be eliminating a garage that was more nonconforming on the side and the rear. He said that the project will improve the garage's setback but will intensify the home's setback. A Board member said that it will be a huge increase in the nonconformity.

A Board asked if there is evidence to show that this is a pre-existing nonconforming structure that was built prior to the adoption of Zoning or the side yard setback bylaw. He said that the Board has only seen

a permit from 1927. Mr. Himmelberger said that side yard setback requirements were enacted on March 12, 1940.

A Board member said that part of the Board's analysis should be to look at the fact that the setback will go from 18.6 feet to 3.5, keeping in mind that the town deemed that a 20 foot side yard setback is appropriate in this district. He said that the Board has to look at how it relates to being substantially more detrimental.

A Board member said that it was clearly the opinion of the framers of the second exempt clause of Chapter 40A, Section 6 that there be the ability to extend a nonconforming portion of a building and that a variance would not always be required for such a condition. He said that he is troubled about the rather dramatic extension of the nonconformity, very much unlike the one that the Brookline case was based on. He said that, were it not for the fact that the Applicant communicated with all of the neighbors and produced documents that they did not think it would be substantially more detrimental, he would probably have a different opinion about this case. Mr. Himmelberger said that the Board might have more difficulty in making its determination were it not for the fact that the pre-existing nonconforming garage will be removed.

The Chairman said that he redefined his study area but it did not materially change the analysis and this will still be the largest house. He said that the Board frequently reviews petitions to go from below average to become the largest house in the neighborhood. He said that what matters with this project is the change in the setback.

A Board member said that part of the Zoning Board's charge is to try to make structures as conforming as possible and not to go in the other direction. He said that the Town set Zoning and parameters for a reason. He said that it is not the sole determinant but is a factor. Mr. Himmelberger said that his client would not come before the Board if he was not starting from the position where he has the pre-existing nonconforming garage. He said that the Board has allowed rebuilding of nonconforming structures in place. He said that this project will bring a nonconforming garage piece forward and attach it to the house, which will make the house more nonconforming but not as nonconforming as the garage was. He said that they will remove the rear nonconformity of three feet and the structure will now be fully conforming to the rear yard setback of 10 feet. He said that it would be a significantly higher burden if there had been no garage with the nonconformities. The Board member said that there will be greater mass with the proposed addition. He said that the existing garage is one story.

The Board members discussed the reduction of an 18.6 foot setback to a 3.5 foot setback and how that relates to the Board's consideration of being substantially more detrimental to the neighborhood. A Board member said that the mass and bulk will be substantially more onerous on the lot than the present garage. A Board member said that the Board has not always viewed a vertical increase that does not exacerbate the setback as an intensification. Mr. Himmelberger said that this should be viewed as a 1.5 story versus a 2 story because it will have a shed dormer on a half story. He said that part of the height is driven by the desire to keep the pitch of the proposed structure consistent with the pitch of the existing structure.

A Board member said that his opinion has changed, based on a detailed reading of the Brookline case. He said that he could make a finding that the proposed structure shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, subject to a condition that the garage is

removed, because the design was carefully worked through and vetted with the impacted neighbors, who provided statements of support.

The Chairman said that although he was concerned about the 3.5 foot setback, he could support a finding that the proposed structure would not be substantially more detrimental to the neighborhood, principally because of the distance between the houses and the neighbors' support. He said that when viewed from the street you cannot tell where the lot line is.

A Board member confirmed that the letter of support from the neighbor at 19 Willow Road, dated February 25, 2019, referenced the new plans.

The Board confirmed that TLAG will be 3,526 square feet. The Board said that it is mindful that a 6,000 square foot lot is very small and a 3,500 square foot house is a large house. Mr. Himmelberger said that there are unique facts in this case.

There was no one present at the public hearing who wished to speak to the petition.

Statement of Facts

The subject property is located at 8 Lawrence Road, on a 6,202 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, in a Water Supply Protection District, with a minimum front yard setback of 24.5 feet where 30 feet is required. The existing nonconforming garage has a minimum right side yard setback of 2.5 feet where 20 feet is required, and the rear yard setback is less than the minimum of 10 feet.

The Petitioner is requesting a Special Permit/Finding pursuant to the provisions of Section XIVE, Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing nonconforming detached garage with less than required right side yard setbacks, and construction of an attached one-car garage with living space above and construction of a two-story addition with less than required right side yard setbacks, on an existing nonconforming structure with less than required front yard and right side yard setbacks, on a 6,202 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, in a Water Supply Protection District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan, dated 1/29/19, stamped by Peter A. Lothian, Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, and Proposed Exterior Views, dated 1/29/19, prepared by Kraus Associates were submitted.

On February 28, 2019, the Planning Board reviewed the petition and recommended that a variance be denied. The Planning Board said although the applicant applied for a special permit, it believes that a variance is required.

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 demolition of an existing nonconforming detached garage with less than required right side yard setbacks, and construction of an attached one-car garage with living space above and construction of a two-story addition with less than required right side yard setbacks, on an existing nonconforming structure with less than required front yard and right side yard setbacks, on a 6,202 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, is intensifying an existing nonconformity, it will not result in additional nonconformities and will 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 demolition of an existing nonconforming detached garage with less than required right side yard setbacks, and construction of an attached one-car garage with living space above and construction of a two-story addition with less than required right side yard setbacks, on an existing nonconforming structure with less than required front yard and right side yard setbacks, on a 6,202 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, subject to the following condition:

- The existing nonconforming detached garage at the rear of the property shall be removed.

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.

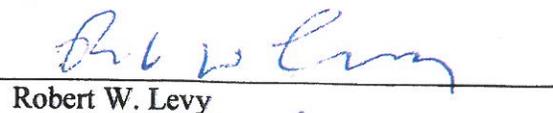
If construction has not commenced, except for good cause, this Special Permit shall expire two years after the date time stamped on this decision.

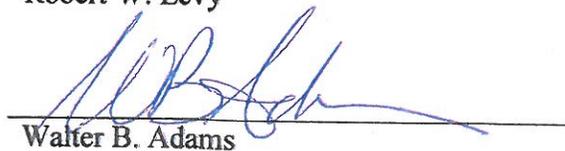
RECEIVED
TOWN ENGINEERING
WELLESLEY MA 02152
2019 APR -2 P 3:07

ZBA 2019-35
Petition of Charles Kraus
8 Lawrence Road

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.


J. Randolph Becker, Chairman


Robert W. Levy


Walter B. Adams

ZBA 2019-35
Applicant Charles Kraus
Address 8 Lawrence Road

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02462
2019 APR -2 P 3:07

In accordance with Section 11 of Chapter 40A of the Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Wellesley, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Date:

Attest:

Cathryn Jane Kato
Town Clerk

LEGEND

AC	ASPHALT CURB	SPOT ELEVATION, HARD SURFACE
B.M.	BENCH MARK	SPOT ELEVATION, SOFT GROUND
CB	CATCH BASIN	TOP OF CURB ELEVATION
CC	CONCRETE CURB	TOP OF WALL ELEVATION
CSW	CONCRETE SIDEWALK	TELEPHONE MANHOLE
DMH	DRAIN MANHOLE	UTILITY POLE
EM	ELECTRIC METER	UTILITY POLE WITH LIGHT
EOP	EDGE OF PAVEMENT	WOOD FENCE
FF=	FINISHED FLOOR ELEVATION	WATER GATE
GG	GAS GATE	
GM	GAS METER	
HVAC	HEATING, VENTILATION, OR AIR CONDITIONING UNIT	
	IRRIGATION CONTROL VALVE	
LS	LANDSCAPED AREAS	
RET-WALL	RETAINING WALL	
	SIGN	
SIGN POST	SIGN POST	
SILL=522.33	SILL ELEVATION	
SLAB=518.11	GARAGE SLAB ELEVATION	
SMH	SEWER MANHOLE	
SPIGOT	WATER SPIGOT	
SPRK	WATER SPRINKLER	

TOW=522.3	TOP OF WALL ELEVATION
TMH	TELEPHONE MANHOLE
UP	UTILITY POLE
WFL	UTILITY POLE WITH LIGHT
WG	WOOD FENCE
	WATER GATE

QUALITY LEVEL "C" INFORMATION ("QLC")

G-QLC	PRODUCT: GAS, OIL, STEAM, PETROLEUM OR GASEOUS MATERIALS
T-QLC	COMMUNICATIONS: TELEPHONE
W-QLC	WATER: LOW PRESSURE, HIGH PRESSURE, FIRE SERVICE

BOUNDARY MONUMENTS OR MARKERS

(F)	FOUND
(S)	SET
CBDH	CONCRETE BOUND WITH DRILL HOLE

DWELLINGS LOCATED WITHIN THE FRONTAGE BETWEEN THE END OF LAWRENCE STREET AND INTERSECTION OF WILLOW ROAD. FRONT SETBACKS WERE CALCULATED BASED ON MASS GIS LOCATION OF DWELLINGS.

ID	ADDRESS	FRONT SETBACK
159-95	19 WILLOW ROAD	30.3'
159-94	8 LAWRENCE ROAD	24.5'
159-93	6 LAWRENCE ROAD	35.5'
159-92	2 LAWRENCE ROAD	33.5'

BUILDING HEIGHT:

EXISTING:	35.6'
PROPOSED:	35.9'

BUILDING COVERAGE:

EXISTING:	AREA	PERCENTAGE
	908 S.F.	14.61%
PROPOSED:	1528 S.F.	24.57%

DRIVEWAY COVERAGE:

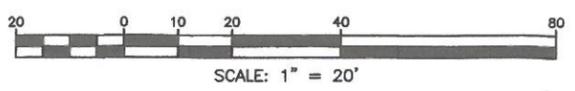
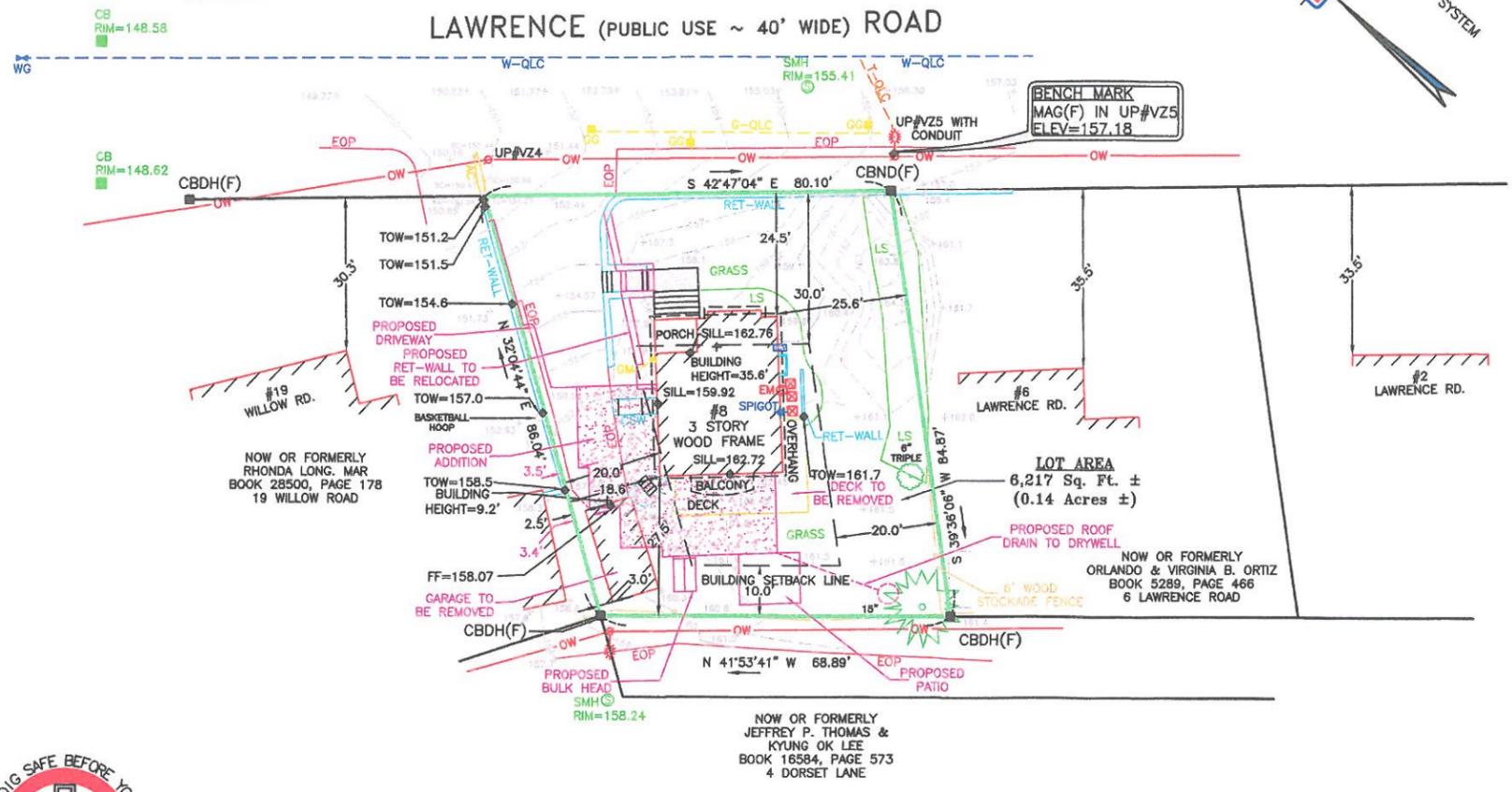
EXISTING:	AREA
	935 S.F.
PROPOSED:	780 S.F.

NOTES

- 1.) RECORD OWNER IS CHARLES E. & PAULINA KRAUS. SEE DEED BOOK 21719, PAGE 121.
- 2.) ELEVATIONS REFER TO NAVD 1988. DERIVED FROM GPS OBSERVATIONS UTILIZING GEIOD 12B.
- 3.) SEE WELLESLEY ASSESSORS PARCEL ID: 159-94.
- 4.) PARCEL FALLS WITHIN ZONING DISTRICT SINGLE RESIDENCE 10.
- 5.) SEE NORFOLK COUNTY REGISTRY OF DEEDS FOR RECORD DOCUMENTS.
- 6.) TOPOGRAPHIC FEATURES, SITE DETAILS AND SIGNIFICANT IMPROVEMENTS DEPICTED HEREON, WERE OBTAINED FROM A FIELD SURVEY CONDUCTED BY DGT ASSOCIATES, ON SEPTEMBER 19, 2018
- 7.) THIS TOPOGRAPHIC SURVEY WAS PREPARED TO MEET NATIONAL MAP ACCURACY STANDARDS AT A SCALE OF 1"=20' HORIZONTALLY AND 1 FOOT CONTOUR INTERVAL VERTICALLY. ANY REPRODUCTIONS OR RESCALING MAY AFFECT THE MAP ACCURACY.
- 8.) LOCATION OF UNDERGROUND UTILITIES SHOWN HEREON WERE DETERMINED FROM EXISTING RECORDS AND FROM LOCATION OF ABOVE GROUND UTILITY FEATURES AND CONFORM TO "ASCE QUALITY LEVEL C" PER ASCE DOCUMENT "CI/ASCE 38-02". LOCATION SHOWN SHALL BE CONSIDERED APPROXIMATE. BEFORE CONSTRUCTION, THE LOCATION OF UNDERGROUND UTILITIES SHALL BE VERIFIED BY THE CONTRACTOR. IN ACCORDANCE WITH CH. 82, SEC. 40 AS AMENDED, ALL UTILITY COMPANIES AND APPLICABLE GOVERNMENT AGENCIES MUST BE CONTACTED. CONTACT "DIG-SAFE" AT 1-888-344-7233.

IN MY PROFESSIONAL OPINION, I CERTIFY TO KRAUS ASSOCIATES THAT, AS A RESULT OF A SURVEY MADE ON THE GROUND TO THE NORMAL STANDARD OF CARE OF PROFESSIONAL LAND SURVEYORS PRACTICING IN MASSACHUSETTS, I FIND THAT THE STRUCTURES FALL WITHIN FLOOD ZONE "X" UNSHADED AS SHOWN ON THE F.I.R.M. MAP FOR WELLESLEY MASSACHUSETTS, PANEL #25021C00166 DATED: 07/17/2012 AND THAT THE LOCATION OF THE STRUCTURES ARE AS SHOWN HEREON.

Peter A. Lothian
 PROFESSIONAL LAND SURVEYOR
 DATE: 1/29/2019



PLAN REFERENCES
 PLAN BOOK 1747 PAGE 350
 PLAN NO. 288 OF 1946
 PLAN NO. 618 OF 1978

8 LAWRENCE ROAD WELLESLEY, MA 02482		RESEARCH: HMP
CERTIFIED PLOT PLAN OF LAND IN WELLESLEY NORFOLK COUNTY		FIELD: MG
		CALCULATIONS: HMP
PREPARED FOR: KRAUS ASSOCIATES 66 CENTRAL STREET SUITE 2 WELLESLEY MA 02481		DRAFTING: HMP
		CHECK: PAL
PREPARED BY: DGT Associates Surveying & Engineering Worcester • Framingham • Boston		PROJ. MANAGER PAL, PLS
 1071 Worcester Road, Framingham, MA 01701 508-879-0030 www.DGTassociates.com		DATE: 01-28-2019
		PROJECT NO.: 25393
		CRD FILE: 25398
		SHEET 1 OF 1

BY:	DESCRIPTION:	DATE:	REV: