

Therefore, modification and extension of a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, to change windows and relocate an air conditioning condenser, subject to the following condition:

1. There shall be reasonable sound mitigation such as shrubbery or lattice for the ac condenser.
2. The Special Permit is extended for a period of one year from the date time stamped on the original decision.
3. Approval does not include the proposed roof over the deck.

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.

2023 MAR 16 PM 2:18
TOWN OF WESTFIELD
INSPECTOR OF BUILDINGS

ZBA 2020-73-Modified, Extended
Petition of Michael & Lindsey McCullough
11 Elmwood 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.


Robert W. Levy, Acting Chairman


Walter B. Adams


Derek B. Redgate

ZBA 2020-73-Modified, Extended
Applicant Michael & Lindsey McCullough
Address 11 Elmwood Road

RECORDED
TOWN OF WELLESLEY
2021 MAR 16 PM 2:18

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

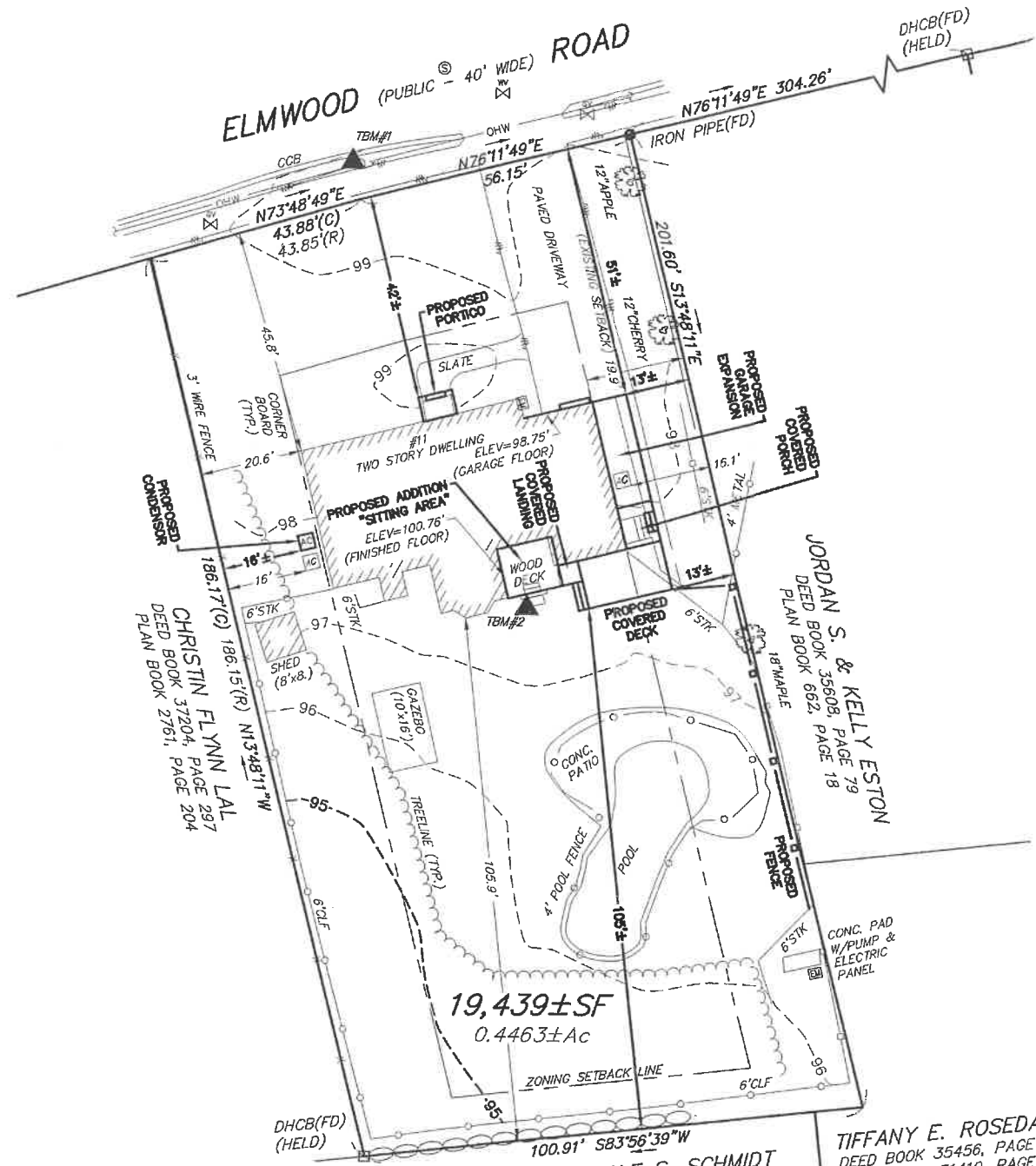
In accordance with Section 11 of Chapter 40A of the Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Wellesley, and that no appeal has been filed, or that if such appeal has been filed,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

Date:

Attest:

Cathryn Jane Kato
Town Clerk

cc: Planning Board
Inspector of Buildings
lrm



ASSESSORS:

MAP 181, LOT 80

RECORD OWNER:

MICHAEL J. & LINDSEY E. McCULLOUGH

REFERENCES:

DEED BOOK 39363, PAGE 577 (SPECIAL PERMIT)
 DEED BOOK 34404, PAGE 166
 PLAN BOOK 2048, PAGE 169
 PLAN BOOK 1352, PAGE 436

ZONING:

SINGLE RESIDENCE TEN THOUSAND FOOT DISTRICT (SR10)
 WATER SUPPLY PROTECTION DISTRICT

NOTES:

- ELEVATIONS SHOWN HEREON ARE REFERENCED TO AN ASSUMED DATUM.
- THE LOCATION OF UNDERGROUND UTILITIES WAS NOT INCLUDED IN THE SCOPE OF THIS SURVEY. UNDERGROUND UTILITIES MAY EXIST. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO VERIFY THE LOCATION, SIZE & ELEVATION OF ALL UTILITIES WITHIN THE AREA OF PROPOSED WORK AND TO CONTACT "DIG-SAFE" AT 811 AT LEAST 72 HOURS PRIOR TO ANY EXCAVATION, DEMOLITION OR CONSTRUCTION.
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- EXISTING LOT COVERAGE BY BUILDINGS IS 2,337±SF (12%). PROPOSED LOT COVERAGE BY BUILDINGS IS 2,538±SF (13%).
- EXISTING BUILDING HEIGHT ABOVE AVERAGE FINISHED GRADE IS 22.3'. PROPOSED HEIGHT OF ADDITION TO MATCH EXISTING BUILDING HEIGHT.

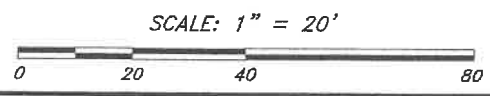
LEGEND

- 234--- SURFACE CONTOUR
- STONE WALL
- — — — — EDGE OF PAVEMENT
- — — — — EDGE OF VEGETATION (TREELINE)
- — — — — CHAIN LINK FENCE
- — — — — WIRE FENCE
- — — — — WOOD FENCE
- — — — — CURB WITH TOP AND BOTTOM CURB ELEVATION
- — — — — OHW — EXISTING UTILITY POLE WITH OVERHEAD WIRES AND GUY POLE
- × 232.61 SPOT ELEVATION
- ⊗ 12"MAPLE PROMINENT DECIDUOUS TREE WITH SIZE AND SPECIES
- (R) RECORD
- (C) CALCULATED
- DHCB DRILL HOLE IN CONCRETE BOUND
- CLF CHAIN LINK FENCE
- STK STOCKADE FENCE
- CONC. CONCRETE
- CCB CAPE COD BERM CURB
- AC AIR CONDITIONING UNIT

ELEVATION BENCH MARKS		
NO.	DESCRIPTION	ELEV.
1	UTILITY POLE — SPIKE SET 1' ABOVE GRADE	100.62'
2	CONCRETE PAD — SOUTHWEST CORNER	97.70'

MICHAEL M. & NICOLE S. SCHMIDT
 DEED BOOK 36063, PAGE 359
 PLAN BOOK 1937, PAGE 215

TIFFANY E. ROSEDALE
 DEED BOOK 35456, PAGE 478
 DEED BOOK 31410, PAGE 218
 DEED BOOK 662, PAGE 18
 PLAN BOOK 662, PAGE 18
 PLAN BOOK 1937, PAGE 215



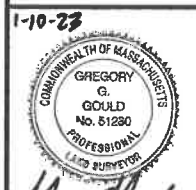
SITE ADDRESS:
 #11
 ELMWOOD
 ROAD
 Wellesley, Massachusetts

PREPARED FOR:
 MICHAEL J.
 McCULLOUGH
 11 Elmwood Road
 Wellesley, Massachusetts 02481

HANCOCK ASSOCIATES

Civil Engineers
 Land Surveyors
 Wetland Scientists

34 CHELMSFORD ST., CHELMSFORD, MA 01824
 VOICE (978) 244-0110, FAX (978) 244-1133
 WWW.HANCOCKASSOCIATES.COM



NO.	BY	APP	DATE	ISSUE/REVISION DESCRIPTION
4	JAR	GGG	1/10/23	UPDATES PER OWNER
3	JSJ	GGG	3/23/21	UPDATES PER NEW DESIGN
2	JSJ	GGG	10/27/20	BUILDING HEIGHTS
1	JSJ	GGG	10/8/20	UPDATES PER ZBA COMMENTS

DATE: 9/28/20 DRAWN BY: JSJ
 SCALE: 1" = 20' CHECK BY: GGG

PLOT PLAN OF LAND IN WELLESLEY, MA

PLOT DATE: Jan 13, 2023 3:38 pm
 PATH: X:\22761-Cutting Edge-Wellesley\DWG\

DWG: 24135pp.dwg

LAYOUT: PLOT

SHEET: 1 OF 1

PROJECT NO.: 24135

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482

J. RANDOLPH BECKER, CHAIRMAN
ROBERT W. LEVY, VICE CHAIRMAN
DAVID G. SHEFFIELD

LENORE R. MAHONEY
EXECUTIVE SECRETARY
TELEPHONE
(781) 431-1019 EXT. 2208

WALTER B. ADAMS
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RICHARD L. SEEGEL

ZBA 2020-73

Petition of Michael McCullough
11 Elmwood Road

Pursuant to due notice, the Special Permit Granting Authority held a Remote Public Hearing on Tuesday, December 15, 2020 at 7:30 pm, on the petition of Michael McCullough requesting a Special Permit/Finding pursuant to the provisions of Section 14E, Section 17 and Section 25 of the Zoning Bylaw that construction of a two-story addition, relocation of air conditioning condensers and construction of a deck with less than required left side yard setbacks, on an existing nonconforming structure with less than required left side yard setbacks, in a 10,000 square foot Single Residence District and a Water Supply Protection District, at 11 Elmwood Road, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On December 2, 2020, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication. In accordance with Chapter 53 of the Acts of 2020, the hearing was scheduled for December 15, 2020.

Present at the public hearing were David Himmelberger, Esq., Michael and Lindsay McCullough, the Petitioner. Mr. Himmelberger said that the home was built in 1958 on an oversized conforming lot of 19,439 square feet in a 10,000 square foot Single Residence District. He said that there is an existing nonconforming left side yard setback of 19.9 feet, along with an air conditioning condenser (ac) that is located within the left side yard setback. He said that the request is to allow construction of a two story structure on the left side for a second bay on the garage with a master bedroom above and to move the ac to the rear, still within the setback area. He said that the neighbors on the left side wrote a letter of support and another neighbor sent an email in support of the project. He said that the height of the addition at 20 feet will be less than the height of 23 feet for the existing structure.

Mr. Himmelberger said that the request is to extend the left nonconformity, as recognized as being permissible under the Bellalta v Brookline Case. He said that while the existing left nonconformity is being increased, the Petitioner believes that with a modest height, no change to the main structure, adding a complementary second floor and an additional bay, the proposed structure will not be substantially more detrimental and requests approval.

A Board member asked if the ac condensers will be new or if the existing ones will be relocated. He asked about proposed sound mitigation. Mr. McCullough said that they intentionally offset the deck at the back of the property so that they could bring the condenser further away from the property line and landscape around it. He said that he did not know the age of the condenser but it is the newer of the two that they have. The Board member asked if the Petitioner considered moving the condensers around the corner in the back yard within the setback. Mr. McCullough said that there is a swimming pool in the back and a mudroom behind the garage, with a deck coming off of the mudroom, so moving the condensers there would not be practical.

A Board member questioned why this is not a variance request. Mr. Himmelberger said that there is an existing nonconforming left side yard setback of 19.9 feet that will be reduced to 11 feet, which is permissible if it is determined to be not substantially more detrimental. He said that the Petitioner and the neighbor who will be most impacted believe that it will not be substantially more detrimental. The Board member questioned how adding 11 or 12 feet of structure into the side yard could be justified, notwithstanding that the fact that the neighbor on that side does not have a problem with it.

The Board discussed concerns about benefits extended to existing nonconformities under *Bellalta v Brookline*.

The Chairman discussed the average, the range of the living spaces and the lot data for a neighborhood of homes around the locus.

A Board member said that the Board has to make a determination that the ac condensers existed in their current location prior to the bylaw prohibiting them in the setback. The Chairman said that the Board will also need to see documentation about noise levels for the condensers that will be installed.

Mr. Himmelberger discussed the constraints of alternative design plans. He asked that the petition be continued to allow the Petitioner time to get more information regarding the compressors.

January 21, 2021

Mr. Himmelberger said that the homeowner investigated the history of the ac and found evidence suggesting that it was installed prior to the 2002 Zoning Bylaw prohibiting it in the setback. He said that Mr. McCullough contacted his current service provider, who did not have an installation date on record. He said that the unit pre-dated the predecessor family who owned the property from 2012 to 2016. He said that a Lennox HS 19 unit in the right side yard dates back to 1988. He said that documentation for the condenser on the right side references a second condenser, a Lennox SH 18 that also dates back to 1988, which is smaller than the HS 19 but similarly sized to the existing left side condenser. He said that it seems reasonable to presume that there were two Lennox units installed in 1988, a larger one on the right and a smaller one on the left.

Mr. Himmelberger said that the existing condenser on the left side is a Bryant Legacy 113A, which is a single stage ac with an advertised decibel rate as low as 72 decibels. He said that the homeowner intends to replace that unit with a new multi stage unit which is more efficient and carries a decibel rating in the mid 50's, which is approximately 100 times lower, based on how sound intensity relates to increasing or decreasing decibels.

Mr. Himmelberger said that there is existing landscaping on the left side between 11 and 19 Elmwood Road, as shown on a plan that was submitted. He said that currently there is a six foot high cedar fence and three ten foot tall mature arbor vitae. He said that a new proposed fence will abut the arbor vitae to form a continuous screen between 11 and 19 Elmwood Road. He said that mature plantings are already in place on the other side of the privacy fence facing 19 Elmwood Road. He said that the homeowner will add additional fencing around the proposed condenser to further mitigate noise.

Mr. Himmelberger said that his client did extensive research of the properties in the neighborhood, with a sample size of 53 homes along Elmwood, Cavanagh, Pilgrim and Weston Roads. He said that he determined that the average side yard setback for these homes was 14.7 feet and 43 of the homes, or 81 percent, had side setbacks of less than 20 feet. He said that the 14 homes that immediately surround 11 Elmwood Road, 12 homes or 86 percent, had side yard setbacks of less than 20 feet, with the average setback for existing nonconforming homes at 12.5 feet. He said that the abutter immediately to the left is currently 48 feet from

the structure at 11 Elmwood Road, and of that a little more than 28 feet is on 19 Elmwood Road. He said that the requested decrease of the setback to 11 feet will result in a total distance between the homes of 39 feet, which is a foot shy of what is commonly required of 20 foot side yard setbacks on each lot.

Mr. Himmelberger said that there is strong neighborhood support and the proposed addition will enable the home to retain a low profile that is consistent with the neighborhood.

A Board member discussed the burden of proof for the homeowner to prove a pre-existing nonconforming use. He asked if any permits were pulled for the ac condenser. Mr. Himmelberger said that he did not find any evidence of that in the building jacket for this or the 1988 condensers. He said that there is documentation for a second Lennox condenser and a separate manual for the HS 18, which is consistent with the smaller condenser on the left side.

A Board member said that the site plan shows a shed on the western side of the property and some outbuildings at the north and south far corners. Mr. Himmelberger said that they will submit a supplemental plan that shows the dimensions and compliance with the bylaw.

The Board discussed Section 19 of the Zoning Bylaw, noise emission and pool equipment. Mr. McCullough said that the pool dates from 1988. Mr. Himmelberger said that they can submit the building permit for the pool, which is located inside the side yard setback.

Mr. Himmelberger discussed looking at the totality of the neighborhood to determine whether the proposed structure will be more detrimental. He said that there is strong neighborhood support, the building fits into the neighborhood nicely even with the addition, there is extensive screening, and a majority of the homes in the neighborhood have pre-existing nonconformities that are comparable to what the Petitioner is seeking. He said that it is not unreasonable to reach the determination that it is not substantially more detrimental.

A Board member said that the nonconformity will increase from three to 106 inches. Mr. Himmelberger questioned how it could be substantially more detrimental if it is substantially similar to other homes on Elmwood Road with five and six foot setbacks. The Board member said that the remedy may be for Town Meeting to change the side yard setbacks in this area of town.

A Board member said that on the existing front elevation, your eye goes to the house and in the proposed front elevation, your eye goes to the garage because the gable is toward you and the dormer goes off to the left, which is not characteristic of other houses in the neighborhood. Mr. Himmelberger said that the garage is set back and the forward house draws your eye, which is difficult to see that with a two dimensional drawing.

A Board member said that an eyebrow over the garage doors at gutter height would change the scale at that end of the house. He said that providing down lighting at the face of the garage doors would mitigate side glare.

Mr. Himmelberger requested that the hearing be continued so that the design could be further refined.

Christine Lal, 7 Elmwood Road, said that her property abuts on the western side of 11 Elmwood Road. She said that she has lived next door for 14 years and has never heard the pool pump or the ac. She said that the town should be thrilled that the Applicant is investing in Wellesley. She said that the McCulloughs are the fourth family to live there since she moved in. She said that encouraging people to invest in their homes builds a stronger neighborhood. She said that they are trying to do something to make their home more functional for a modern family with three children. She said that they are wonderful neighbors. She said that

there have been a lot of renovations in the neighborhood that were much more disruptive. She said that they are not tearing down and building something that might be more conforming but does not necessarily add to the character of the neighborhood. She said that when people invest in their homes, they add to the stability of the neighborhood by building a home that they will want to live in for a long time. She said that there is a sense of community in the neighborhood and the neighbors would hate to lose the McCulloughs over a couple of feet for a setback.

Jorden Esten, 19 Elmwood Road, said that he agreed with everything Ms. Lal said. He said that he agreed with the idea of trying to keep people here and letting them make small improvements to their wonderful old houses. He said that his greatest fear is that the house will get knocked down and a three story house will be built on top of them. He said that it is a lovely house with a great family in it. He said that he has known the McCulloughs for the four years that he has lived there. He said that it would be a shame to see a small house with some improvements replaced with a large new one that would impact the neighborhood much more. He said that he is wholeheartedly in favor of this. He said that the McCulloughs discussed their plans with him. He said that they will be adding to the curb appeal of the house and there will be a better view from his side. He said that he has never heard their ac.

April 1, 2021

Mr. Himmelberger said that the Applicant submitted further revisions to address the Board's concerns. He said that the left side of the expanded garage was pulled to the minimum for a two car garage and now has a proposed left side yard setback of 13 feet, where previously it was sought to be 11 feet. He said that the shed dormer on the left side of the garage roof was eliminated and the direction of the roof was reoriented to be consistent with the original house. He said that they raised the roof to match the height of the original house. He said that an eyebrow was placed over the garage door to decrease the prominence of the gable above the garage. He said that the gable windows are in line with the existing dormers. He said that revised TLAG will be 3,664 square feet, which is 64 square feet above the trigger in a 10,000 square foot Single Residence District. He said that a revised plot plan shows the dimensions of an existing shed and gazebo. He said that the Petitioners believe that they have addressed the Board's earlier concerns.

A Board member said that it appears that one of the ac units is 16.1 feet from the side yard and the other is 10 feet on the easterly elevation. Mr. Himmelberger said that the existing unit that is adjacent to the existing structure has a setback of 16.1 feet and the intention is to relocate it to be 10 feet from the property line. He said that the expanded plot plan with additional landscaping shows arbor vitae to be added in that area. He said that existing mature arbor vitae screen the area where the proposed ac will be relocated to. He said that a proposed fence will come back from the deck along the property line. He said that this was the best location based on lengths of runs and location of existing ducts in the house and the air handler unit.

Statement of Facts

The subject property is located at 11 Elmwood Road, in a 10,000 square foot Single Residence District and a Water Supply Protection District, with a minimum left side yard setback of 19.9 feet for the main structure and a minimum left side yard setback of 16.1 feet for the air conditioning condenser where 20 feet is required.

The Petitioner is requesting a Special Permit/Finding pursuant to the provisions of Section 14E, Section 17 and Section 25 of the Zoning Bylaw that construction of a two-story addition, relocation of air conditioning condensers and construction of a deck with less than required left side yard setbacks, on an existing nonconforming structure with less than required left side yard setbacks, in a Water Supply Protection District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Letters to Zoning Board of Appeals, dated 9/29/20 & 3/24/21, from David J. Himmelberger, Esq., A Plot Plan, dated 9/28/20, revised 10/8/20 & 10/27/20, stamped by Gregory G. Gould, Professional Land Surveyor, Plot Plan of Land, dated 9/28/20, revised 10/8/20, 10/27/20 & 3/23/21, prepared by Hancock Associates, Floor Plans and Elevation Drawings, dated 9/21/20, revised 3/21/21, and Elevation Rendering, prepared by David Sharff, P.C., and photographs were submitted.

On December 14, 2020, the Planning Board reviewed the petition and recommended that a special permit be denied or action delayed.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing.

The Board found that the Design and Operation Standards in Part F are adequately satisfied and not otherwise prohibited in Part D.1, of Section XIVE of the Zoning Bylaw for Water Supply Protection Districts.

It is the opinion of this Authority that construction of a two-story addition, relocation of air conditioning condensers and construction of a deck with less than required left side yard setbacks, on an existing nonconforming structure with less than required left side yard setbacks will result in the intensification of existing nonconformities, 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 construction of a two-story addition, relocation of air conditioning condensers and construction of a deck with less than required left side yard setbacks, on an existing nonconforming structure with less than required left side yard setbacks,

1. The existing fence shall be extended past the relocated air conditioning unit.
2. Existing vegetation and plantings around the relocated air conditioning unit shall be maintained.

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.

2021 APR 15 P 1:39
ZONING BOARD OF APPEALS
111 STATE STREET
SOUTH BOSTON, MA 02118

ZBA 2020-73
Petition of Michael McCullough
11 Elmwood Road

APPEALS FROM THIS DECISION,
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J. Randolph Becker (L.M.)
J. Randolph Becker, Chairman

Robert W. Levy (L.M.)
Robert W. Levy

David G. Sheffield (L.M.)
David G. Sheffield

ZBA 2020-73
Applicant Michael McCullough
Address 11 Elmwood Road

APR 15 P 1:39
TOWN CLERK'S OFFICE
WELLESLEY, MA 02158

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

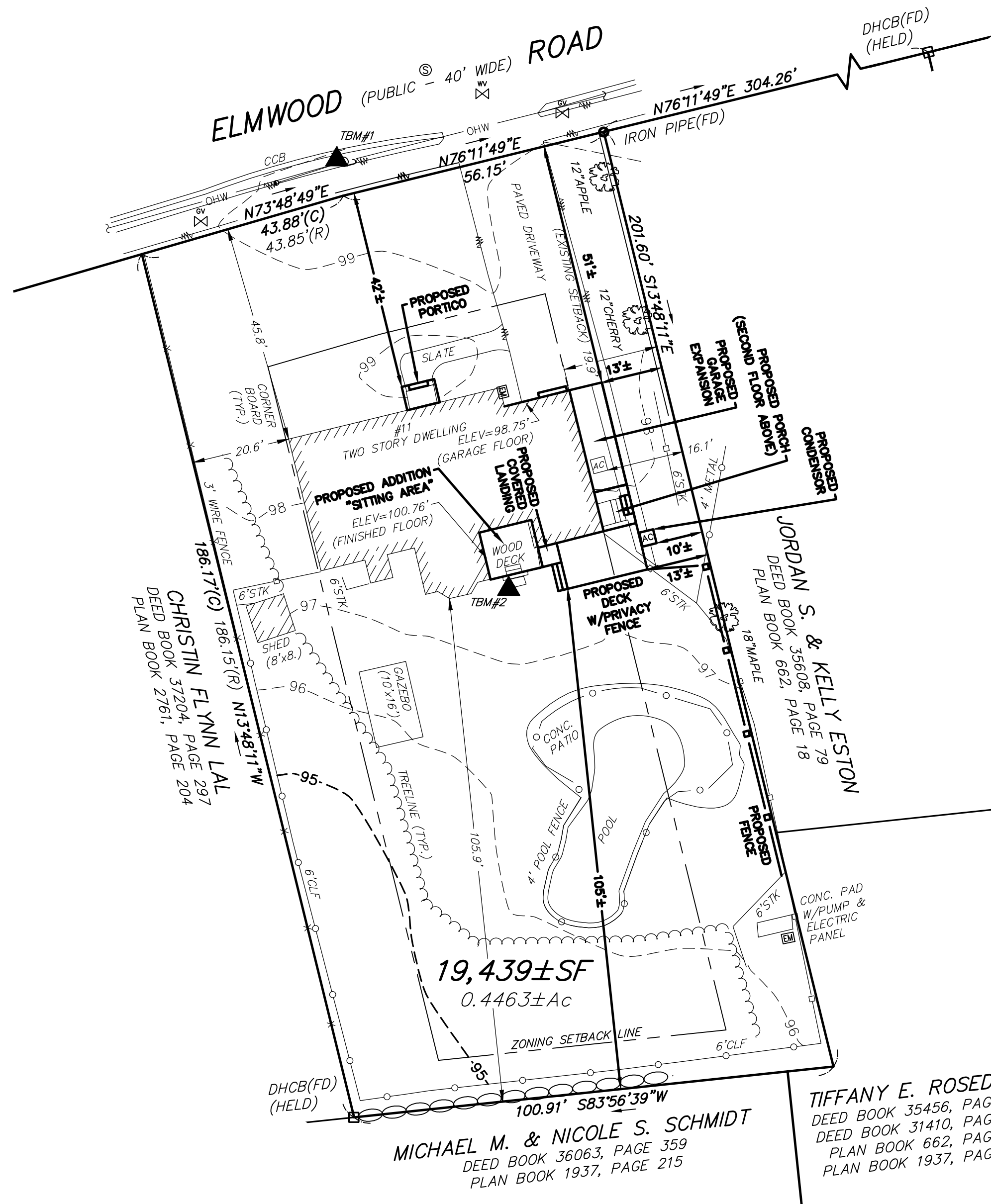
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Date:

Attest:

Cathryn Jane Kato
Town Clerk

cc: Planning Board
Inspector of Buildings
lrm



ASSESSORS:

MAP 181, LOT 80

RECORD OWNER:

MICHAEL J. & LINDSEY E. McCULLOUGH

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PLAN BOOK 662, PAGE 18

SITE ADDRESS:

#11
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 ROAD
 Wellesley, Massachusetts

PREPARED FOR:

MICHAEL J.
 McCULLOUGH

11 Elmwood Road
 Wellesley, Massachusetts 02481

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SCALE:			1" = 20'	CHECK BY: GGG

**PLOT
 PLAN OF LAND
 IN
 WELLESLEY, MA**

PLOT DATE: Mar 23, 2021 3:59 pm
 PATH: X:\22751-Cutting Edge-Wellesley\DWG\

DWG: 24135pp.dwg

LAYOUT: PLOT

SHEET: 1 OF 1

PROJECT NO.: 24135

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▲	NO.	DESCRIPTION	ELEV.
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