



## ZONING BOARD OF APPEALS

888 WORCESTER STREET, SUITE 160, WELLESLEY, MA 02482

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2022 AUG 5 8 PM 12:20  
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TOWN CLERK'S OFFICE  
WELLESLEY MA 02482

ZBA 2022-53

Petition of Timothy Eaton & Catherine Dyer  
58 Upson Road

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Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, August 4, 2022 at 7:30 pm, in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Timothy Eaton & Catherine Dyer requesting a Variance pursuant to the provisions of Section 19 and Section 24 of the Zoning Bylaw for demolition of an existing nonconforming garage and construction of a new nonconforming garage on the same footprint with an attached carport addition, with less than required side yard and rear yard setbacks, at 58 Upson Road, in a 10,000 square foot Single Residence District, in a Water Supply Protection District.

On July 12, 2022, 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., Timothy Eaton and Catherine Dyer, the Petitioner. Mr. Himmelberger said that the request is for a variance that originated a year ago. He said that due to Covid and other intervening issues, the work did not begin. He said that with the looming expiration, his clients sought to request an extension of the variance. He said that the request was submitted prior to the expiration of the original variance but could not be scheduled to be heard within a 30 day period. He said that if the permit granting authority does not grant the extension within 30 days of the date of application, the rights can only be re-established after notice and a new hearing, pursuant to Chapter 40A.

Mr. Himmelberger said that the Applicant resubmitted a request for a zoning variance for the construction of a unique garage that sits in a bump out of a lot. He said that the garage was originally built pursuant to a building permit. He said that the garage is deteriorating and the Applicant wants to rebuild and add a carport on the conforming side. He said that, based on the shape of lot, the Board previously granted a variance, ZBA 2021-24. He asked that the new application for a variance stand on the prior submittal.

The Chairman said that a copy of the building permit for the garage was submitted with the new application. He said that the Board did not find any zoning relief when the garage was constructed in 1978.

Mr. Himmelberger said that the lot has an unusual shape in that it is a rectangle with a protruding 25 to 35 foot extension on the right side, midway up the property line, similar to a jigsaw puzzle piece.

Mr. Himmelberger said that his clients hold the rights to access the garage directly over the driveway.

There was no member of the public who wished to speak to the petition.

Statement of Facts

The subject property is located at 58 Upson Road, in a 10,000 square foot Single Residence District, in a Water Supply Protection District. The detached accessory garage structure has minimum side yard setbacks of 6.1 feet, 7.2 feet, and 7.3 feet where 20 feet is required, and a minimum rear yard setback of 4.5 feet where 10 feet is required.

The Petitioner is requesting a Variance pursuant to the provisions of Section 19 and Section 24 of the Zoning Bylaw for demolition of an existing nonconforming garage and construction of a new nonconforming garage on the same footprint with an attached carport addition, with less than required side yard and rear yard setbacks.

Letter to Zoning Board of Appeals, dated 7/7/22, from David Himmelberger, Esq., an Existing Conditions Plan and Site Plan, dated 10/6/20, stamped by Scott D. Cameron, Professional Land Surveyor, Floor Plans and Elevation Drawings dated 1/3/21, prepared by Steven Garafalo, were submitted.

On August 2, 2022, the Planning Board reviewed the petition and recommended that a variance be approved.

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 14E of the Zoning Bylaw for Water Supply Protection Districts.

It is the opinion of this Authority that literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the petitioner owing to circumstances relating to the shape of such land, which does not generally affect the zoning district in which it is located, the hardship has not been self-created, and desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

Therefore, the requested Variance from the terms of Section 19 and pursuant to the provisions of Section 24-D of the Zoning Bylaw is granted to allow for demolition of an existing nonconforming garage and construction of a new nonconforming garage on the same footprint with an attached carport addition, with less than required side yard and rear yard setbacks, in accordance with the submitted plot plan and construction drawings.

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 Variance shall expire one year after the date time stamped on this decision.


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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

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WELLESLEY MA 02482  
2022 AUG 28 PM 12:20

ZBA 2022-53  
Applicant Timothy Eaton & Catherine Dyer  
Address 58 Upson Road

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

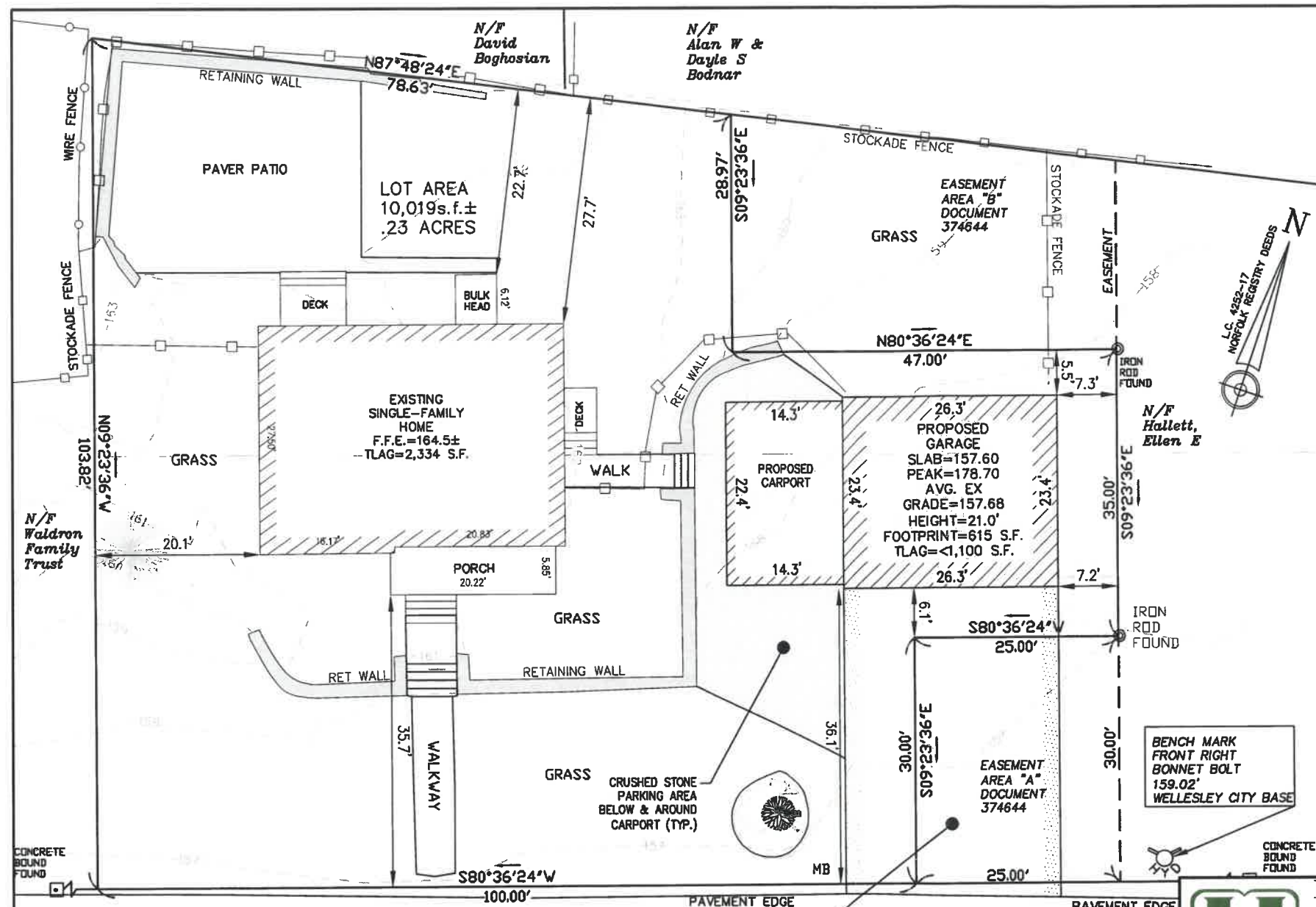
In accordance with Section 11 of Chapter 40A of the Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Wellesley, and that no appeal has been filed, or that if such appeal has been filed,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

Date:

Attest:

\_\_\_\_\_  
Cathryn Jane Kato  
Town Clerk

cc: Planning Board  
Inspector of Buildings  
lrm



#### SITE NOTES

1. THIS PLAN IS BASED ON A FIELD SURVEY PERFORMED BY R.E. CAMERON & ASSOCIATES, INC. IN FEBRUARY 2018 AND UPDATED IN SEPTEMBER 2020.
2. NO KNOWN WETLAND RESOURCE AREAS ARE LOCATED WITHIN JURISDICTIONAL DISTANCE OF THE SUBJECT PROPERTY.
3. LOCATION OF SUBSURFACE UTILITIES ARE BASED ON OBSERVABLE ABOVE GROUND EVIDENCE AND AVAILABLE TOWN AND PRIVATE UTILITY RECORDS. THE SIZE, TYPE AND LOCATION OF UTILITIES SHOWN ARE APPROXIMATE. HENDERSON CONSULTING SERVICES, LLC, CANNOT BE HELD RESPONSIBLE FOR DAMAGES INCURRED AS A RESULT OF UTILITIES THAT ARE NOT SHOWN OR SHOWN INACCURATELY. THE CONTRACTOR SHOULD HAVE THE UTILITIES PROPERLY LOCATED PRIOR TO THE BEGINNING OF CONSTRUCTION BY CONTACTING DIGSAFE (888-344-7233). THE CONTRACTOR SHOULD ALSO EXCAVATE TEST PITS TO VERIFY UTILITY LINE LOCATIONS AS NECESSARY.
4. ELEVATIONS SHOWN HEREON REFER TO THE TOWN OF WELLESLEY VERTICAL DATUM.
5. ABUTTER'S INFORMATION WAS COMPILED FROM THE LATEST AVAILABLE TOWN OF WELLESLEY ASSESSOR'S RECORDS.

#### NORFOLK COUNTY REGISTRY OF DEEDS:

DEED REFERENCE:  
LAND COURT CERTIFICATE  
183293

PLAN REFERENCE:  
LAND COURT PLAN  
4252-17

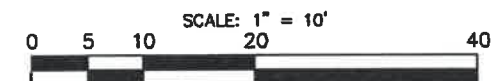
#### EASEMENTS:

DEED REFERENCE:  
BOOK 1013  
PAGE 57

DOCUMENT  
374644

#### GARAGE NOTES

1. PROPOSED GARAGE FOOTPRINT IS THE SAME AS THE EXISTING GARAGE AND ROTATED TO ALIGN WITH THE EXISTING HOUSE ON THE PROPERTY.
2. PROPOSED CARPORT LOCATED ON THE WEST SIDE OF THE GARAGE WILL BE OPEN ON THREE SIDES.
3. PROPOSED SITE IMPERVIOUS AREA WILL NOT CHANGE AS A RESULT OF THE GARAGE RECONSTRUCTION. THE CARPORT WILL COVER A CRUSHED STONE PARKING AREA THAT WILL ALLOW FOR RUNOFF FROM THE CARPORT ROOF TO INFILTRATE INTO THE GROUND BELOW.



## UPSON ROAD

(20' WIDE)

BOOK 631 PAGE 86

PAVEMENT EDGE

#### MINIMUM AREA AND DIMENSIONAL REQUIREMENTS:

DISTRICT: SINGLE RESIDENCE 10					
CRITERIA	REQUIRED	EXISTING HOUSE	EXISTING GARAGE	PROPOSED GARAGE	TOTAL PROPOSED
LOT AREA	10,000 S.F.			10,019 S.F.	
LOT FRONTAGE	60' MIN.			100.0'	
FRONT YARD WIDTH	60' MIN.			100.0'	
FRONT YARD DEPTH	30' MIN.	35.7'	36.1'	36.1'	
SIDE YARD WIDTH	20' MIN.	20.1'	7.2'	7.2'	
REAR YARD DEPTH	10' MIN.	22.7'	4.5'	5.5'	
MAXIMUM TLG	3,600 S.F.	2,334 S.F.	1,100 S.F.	1,100 S.F.	3,434 S.F.
BUILDING COVERAGE	2,500 S.F.	1,143 S.F.	615 S.F.	934 S.F.	2,077 S.F.

#### NOTES

- EXISTING GARAGE IS NON-CONFORMING WITH RESPECT TO SIDE AND REAR YARD SETBACKS.
- BUILDING COVERAGE INCLUDES PROPOSED CARPORT
- ALL SETBACK DIMENSIONS MEASURED TO BUILDING CORNERS. ALL OVERHANGS PROJECT NO MORE THAN 18" FROM THE FACE OF BUILDING.

DRAWN BY: SCOTT P. HENDERSON, PE

SCALE: 1"=10'

REVISION:

PROJECT: 58 UPSON

ISSUE DATE: 10/6/2020



### HENDERSON CONSULTING SERVICES

Professional Civil Engineering & Land Planning

P.O. Box 626, Lexington, MA 02420

(774) 993-9903 hscivil@gmail.com

PROJECT:

**SITE PLAN**  
**58 UPSON ROAD**  
**ASSESSOR'S MAP 190, LOT 100**  
**WELLESLEY, MASSACHUSETTS**

OWNER:

**TIM EATON & CATHERINE DYER**  
**58 UPSON ROAD**  
**WELLESLEY, MASSACHUSETTS 02482**

DRAWING TITLE

**Garage Reconstruction Plan**

SHEET #

**1 of 1**



