

TOWN OF WELLESLEY



MASSACHUSETTS

## ZONING BOARD OF APPEALS

888 WORCESTER STREET • SUITE 160 • WELLESLEY, MA 02482

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

LENORE R. MAHONEY  
EXECUTIVE SECRETARY  
TELEPHONE  
(781) 489-7450

WALTER B. ADAMS  
DEREK B. REDGATE  
PETER COVO

April 4, 2024

7:30 pm

Zoning Board of Appeals Members Present:

J. Randolph Becker  
David G. Sheffield  
Derek B. Redgate

### BUSINESS MEETING

#### ZBA 2024-06, FALLON DEVELOPMENT, 18 COLONY ROAD

Present at the Public Hearing were David Himmelberger, Esq., and Michael Tartamella, AIA, Patrick Ahearn Architect.

Mr. Himmelberger said that this is an unusual request for a minor modification in that there are no changes. He said that the Board approved a special permit for plans that showed an existing house with a ridge height at an elevation of 242.2 feet and a proposed new house with an identical ridge height. He said that the focus was on the fact that the height was not increasing. He said that the Petitioner failed to demonstrate that the existing ridge height at 242.2 feet was actually measuring 36.1 feet from average grade. He said that because the proposed house is being pushed further into the yard where it drops off, the ridge height remains static at 242.2 feet but the height measured from finished grade will be 39.5 feet. He said that there will be a little grading at the rear so that it will continue to look exactly as the existing house did in terms of grade and elevation. He said that nothing is changing but they needed to call out and include in the special permit that the building height was originally pre-existing nonconforming, and although the relative height is not changing, the calculated height is changing slightly.

A Board member asked if the slightly changing calculated height is the average height. Mr. Himmelberger said that it is the average height from original grade, not finished grade. He said that they will push the grade back, comparable with homes on either side. He said that there is a bit of a divot in the back. He said that the elevation remains the same but it is just how they calculated the height that has changed.

A Board member said that under a special permit, you need to maintain the average grade and not the ridge height. Mr. Himmelberger said that the grade drops off three feet. He said that the grade will be maintained and increased by three feet. He said that the house will not present any taller than it was proposed to present or as the current house presents at 36.1 feet, which is nonconforming. He said that nothing changes except that the house is being pushed backwards and because of the way that they calculated the more severe of the original versus the finished grade, the original comes in at 39.5 feet. He said that just as in the Bellalta v Brookline case, you can worsen a pre-existing nonconformity if in doing so it is not substantially more

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WELLESLEY MA 02482

detrimental to the neighborhood. He said that the abutting homes are at 245.7 at 22 Old Colony Road and 242 at 14 Old Colony Road. He said that everything is even as you perceive it from the street. He said that his client thinks that it is a minor modification because all that they are doing is acknowledging that there was a pre-existing nonconformity, it remains a nonconforming height, albeit taller by how it is calculated but not taller as it is viewed.

Mr. Himmelberger said that the building that received approval from the Board has not changed. He said they have not modified the building but are just acknowledging the pre-existing nonconformity. He said that the request is to modify the decision, not the building.

A Board member said that he did not see height of houses calculated by an actual elevation. He said that the height of a house is calculated by the average grade calculation. He said that the original application did not ask for relief for the height of the building but now the height of the building does not meet Zoning. Mr. Himmelberger said that it did not meet Zoning before either. He said that if it was previously conforming, they would have to come before the Board for a variance. He said that, in this case, it was already nonconforming at 36.1 feet.

A Board member asked if there are changes that they can make to the grading that would maintain the 36.1 feet. Mr. Himmelberger said that they can do that by pushing the existing grade out and removing the drop off but they still have to calculate from the original grade. He said that the plan is to not have a 39 foot exposure to push the grade back. The Board member said that post construction, the house will be no taller than 36.1 feet from finished grade.

The Board voted unanimously to make a determination that acknowledgement of the pre-existing nonconforming height from average grade of 36.1 feet and the proposed building height of 39.5 feet measured from original grade is a minor modification to the decision and does not require reopening the public hearing.

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MASSACHUSETTS

**ZONING BOARD OF APPEALS**

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(781) 431-1019 EXT. 2208

WALTER B. ADAMS  
DEREK REDGATE  
JANET WATSON  
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ZBA 2024-06  
Petition of Fallon Development Inc.  
18 Old Colony Road

Pursuant to due notice, the Special Permit Granting Authority held a Remote Public Hearing on Thursday, February 1, 2024, at 7:30 pm, on the petition of Fallon Development Inc. requesting a Special Permit/Finding pursuant to the provisions of Section 5.1 and Section 6.3 of the Zoning Bylaw that demolition of an existing nonconforming structure and reconstruction of a new two-story structure with less than required right side yard setbacks, at 18 Old Colony Road, in a 20,000 square foot Single Residence District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On December 27, 2023, 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., Peter Fallon, Fallon Development, and Mike Tartamella, Architect.

Mr. Himmelberger said that the request is for a special permit to raze and rebuild a nonconforming home with insufficient right side yard setbacks but otherwise conforming to Zoning Bylaws. He said that the existing right side yard setback is 11.9 feet to the garage. He said that the house will be pushed back slightly to about 38 feet, and the right side yard setback will be improved to 12.8 feet. He said that house was previously determined by the Historical Commission as preferably preserved. He said that a waiver was sought thereafter and the submitted plans were approved.

Mr. Tartamella said that they did a neighborhood study as part of a presentation to the Historical Commission that demonstrates that the proposed structure fits in with the neighborhood in terms of style, mass, scale and volume, even though it will be slightly over the TLAG threshold.

A Board member asked if the setback was based on topography. Mr. Tartamella said that it was based somewhat on configuration and architectural style. He said that the garage projects forward and the

Property Address: 18 Old Colony Rd Wellesley Certificate # 210107

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 Petition of Fallon Development Inc.  
 18 Old Colony Road

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garage doors are turned to an arrival court, which gives it more presence on the street. He said that the main body of the house was moved back from the location of the front of the existing structure.

The Chairman said that the original nonconformity is a 12.0 foot side yard setback. He questioned why a new nonconformity would not require a variance instead of a special permit. Mr. Himmelberger said that the Board has historically treated reconstruction of existing nonconforming structures as continuations of the existing home and has engaged in analysis as to whether or not the proposed reconstruction will result in an intensification or addition of nonconformities. He said that if there is an intensification or addition of nonconformities, the Board goes on to make a determination whether the proposed changes will be substantially more detrimental to the neighborhood than the currently existing nonconforming structure or use. He said that the Board is permitted under Section 5.1 of the Zoning Bylaw to grant a special permit for the razing and reconstruction of the new home.

The Chairman discussed the topography of the lot. He said that the house is sited on the flattest part of the lot.

A Board member discussed discrepancies between the Site Plan that was drawn by the Architect and the Plot Plan. Mr. Fallon said that the 11.9 foot dimension on the Plot Plan is correct.

A Board member said that the Engineering Division submitted comments about the drain easement, relocation of the house, and increase in impervious area. Mr. Himmelberger said that his client will accept the comments as a condition. Mr. Fallon said that they made sure that they did not impact anything in the drainage easement by moving the house further away from it.

No member of the public wished to speak to the petition.

#### Statement of Facts

The subject property is located at 18 Old Colony Road, in a 20,000 square foot Single Residential District with a minimum right side yard setback of 11.9 feet where 20 feet is required.

The Petitioner is requesting a Special Permit/Finding pursuant to the provisions of Section 5.1 and Section 6.3 of the Zoning Bylaw that demolition of an existing nonconforming structure and reconstruction of a new two-story structure with less than required right side yard setbacks, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan, dated 12/19/23, stamped by Michael A. Pustizzi, Professional Land Surveyor, Floor Plans and Elevation Drawings, dated 12/15/23, prepared by Patrick Ahearn Architect, TLAG Affidavit, and photographs were submitted.

On January 26, 2024, the Planning Board reviewed the petition and recommended that a Special Permit be approved.

On January 31, 2024, Rafi Razzaque, Civil Engineer, Town of Wellesley DPW Engineering Division, submitted comments.

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 Petition of Fallon Development Inc.  
 18 Old Colony Road

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### Decision

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

It is the opinion of this Authority that demolition of an existing nonconforming structure and reconstruction of a new two-story structure with less than required right side yard setbacks will not result in the intensification of an existing nonconformity, 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 structure and reconstruction of a new two-story structure with less than required right side yard setbacks, subject to the following conditions:

1. The comments from the Department of Public Works, Engineering Division, shall be incorporated in the plans.
2. The dimensions on the Site Plan, dated 12/15/23, prepared by Patrick Ahearn Architect, shall conform with the dimensions on the Plot Plan, dated 12/19/23, stamped by Michael A. Pustizzi, Professional Land Surveyor.

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 2024-06  
 Petition of Fallon Development Inc.  
 18 Old Colony 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 (LM)  
 J. Randolph Becker, Chairman

David G. Sheffield (LM)  
 David G. Sheffield

Peter Covo (LM)  
 Peter Covo

ZBA 2024-06  
 Applicant Fallon Development Inc.  
 Address 18 Old Colony Road

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

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 WELLESLEY, MA 02156

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: 3-7-2024

Attest:

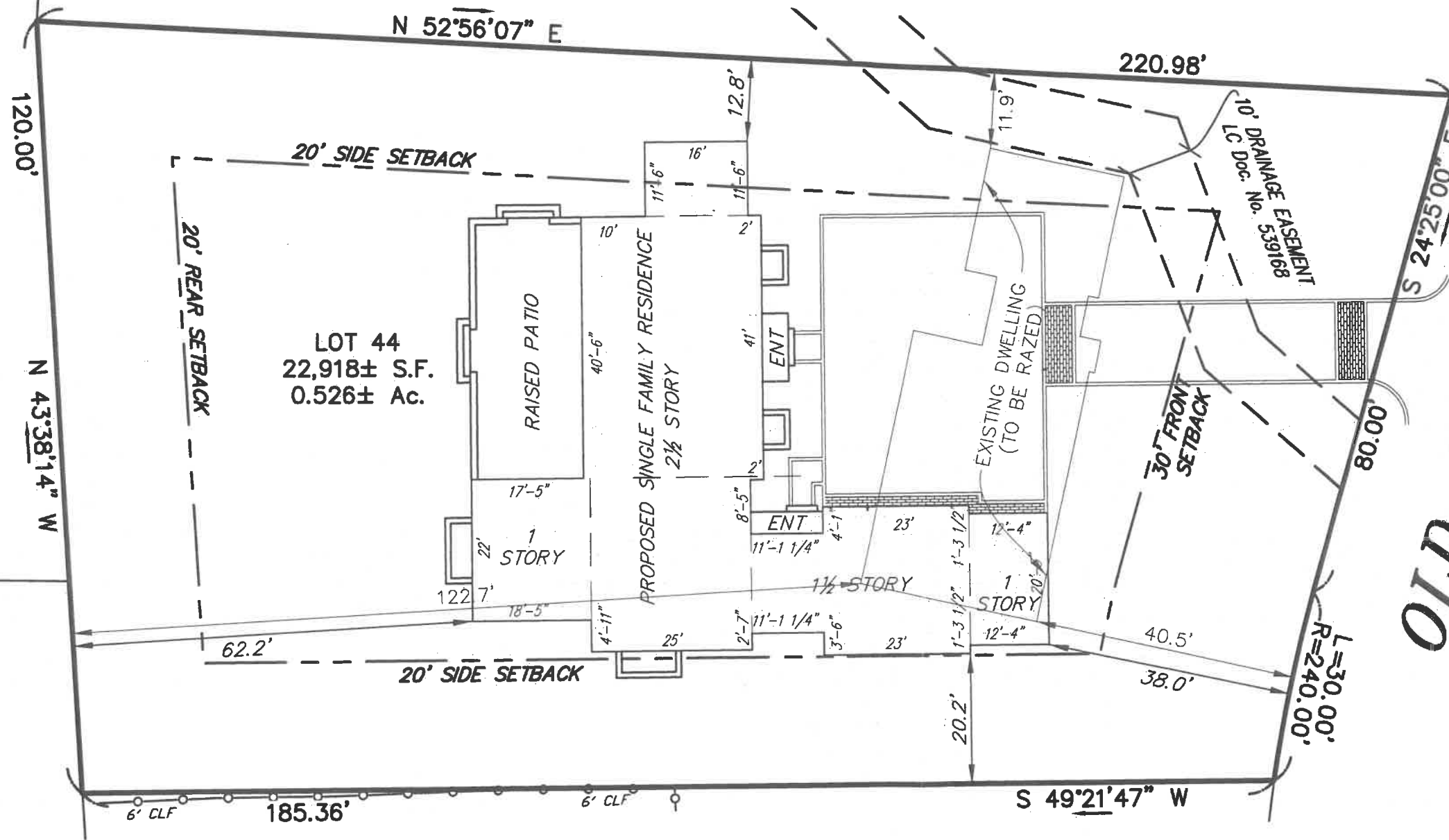
Cathryn J. Kato

Cathryn Jane Kato  
 Town Clerk

cc: Planning Board  
 Inspector of Buildings  
 lrm

**REFERENCES**  
 NORFOLK COUNTY REGISTRY OF DEEDS  
 PLAN WITH LC Doc. No. 539168  
 LAND COURT PLAN No. 15672 A,B,C,D,Y,10

**"500 FOOT RULE"**  
 A SURVEY OF THE FRONT YARD SETBACKS OF #10,  
 #14, #18, #22 & #28 OLD COLONY ROAD, AND THE  
 CLOSEST FRONT SETBACK WAS #28 AT 37.9 FEET.



**OLD COLONY ROAD**  
 (PUBLIC - 40' WIDE)

LAND COURT PLAN No. 15672-10

**FLOOD NOTE**  
 BY GRAPHIC PLOTTING ONLY,  
 THE PARCEL SHOWN HEREON IS  
 LOCATED IN ZONE X AS SHOWN  
 ON FLOOD INSURANCE RATE MAP  
 No. 25021C0016E, EFFECTIVE  
 DATE JULY 17, 2012

ZONING DISTRICT: SR-20	REQUIRED	EXISTING	PROPOSED
MINIMUM LOT AREA	20,000 S.F.	22,918± S.F.	22,918± S.F.
MINIMUM FRONTAGE	60 FEET	110 FEET	110 FEET
MINIMUM FRONT SETBACK	30 FEET	40.5 FEET	38.0 FEET
MINIMUM SIDE SETBACK	20 FEET	11.9 FEET	12.8 FEET
MINIMUM REAR SETBACK	20 FEET	122.7 FEET	62.2 FEET
LOT COVERAGE (S.F.)	4,000 S.F.	1,721 S.F.	3,349 S.F.
LOT COVERAGE %	18%	7.5%	14.6%



**PROPOSED PLOT PLAN  
 #18 OLD COLONY ROAD**

IN  
**WELLESLEY, MA**  
 (NORFOLK COUNTY)

SCALE: 1" = 20' DATE: 12/19/2023

0 20 40 60 ft  
**Precision Land Surveying, Inc.**  
 32 Turnpike Road  
 Southborough, Massachusetts 01772  
 TELE NO.: (508) 460-1789 FAX NO.: (508) 970-0096  
 511201PP1.DWG