

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS
888 WORCESTER STREET • SUITE 160 • WELLESLEY, MA 02482

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ZBA 2024-33
Petition of 12 Curve LLC
12 Curve Street

Pursuant to due notice, the Special Permit Granting Authority held a Remote Public Hearing on Thursday, May 9, 2024, at 7:30 pm, on the petition of 12 Curve LLC requesting a Special Permit/Finding pursuant to the provisions of Section 3.8, Section 5.1 and Section 6.3 of the Zoning Bylaw that 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, left side yard and right side yard setbacks, at 12 Curve Street, in a 10,000 square foot Single Residence District, in a Water Supply Protection District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On April 4, 2024, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

May 9, 2024

Present at the public hearing were David Himmelberger, Esq., Kristen Dibella Prall, the Petitioner, and David Boronkay, Architect.

Mr. Himmelberger said that the request is for a special permit to renovate and add onto an existing structure with less than required right side yard, left side yard, and front yard setbacks.

Mr. Boronkay said that it is an oversized lot. He said that the concrete court and shed will be removed. He said that the existing right side yard setback of 11.2 feet will be maintained, the left side yard setback will be 24.5 feet to the addition and 30 feet to the basement level garage. He said that the staggered gambrel motif will be less apparent from the street view. He said that there will be private access to an Accessory Dwelling Unit (ADU) in the basement. He said that the property shares a common driveway entrance.

The Chairman discussed concerns about quadrupling the size of the house. He said that the house will be too big for this lot and the zone. He said that the house does not comply with setback requirements.

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Ms. Prall said that there are eight condominiums located across the street and the property abuts apartment buildings. She said placement of the structure was due to the topography and the amount of ledge on the lot. She said that there are houses of similar size in the College Heights neighborhood.

The Chairman said that the Board received a number of comments from neighbors.

Pamela Carr, 14 Curve Street, speaking on behalf of herself and her husband, James Carr, said that her property abuts 12 Curve Street. She said that they have lived there for 23 years. She said that the extension would be substantially more detrimental to the area. She discussed concerns about losing light and air. She said that her home has nonconforming side yard setbacks, with only 20 feet to the structure at 12 Curve Street. She said that the proposed three-story addition will extend the length of her property. She said that the existing three windows that overlook her property will increase to 19 windows, which eliminates privacy. She said that the median size of houses on the street is 2,200 square feet. She said that the proposed home will not fit into the neighborhood and she strongly opposed the petition.

Alison McIntyre, 28 Howe Street, said that she can see the back of the house at 12 Curve Street. She said that the whole neighborhood was built on ledge. She discussed concerns about stormwater runoff from increased impervious surfaces. She said that it will be a huge house, especially when the garage is included. She said that it will be 6,780 square feet, not 6,248 square feet. She said that with the eight gable ends sticking up at the outside perimeter of the roof, it produces a lot of massing and height from every perspective in the neighborhood.

Joel Bloom, 20 Howe Street, said that he and his wife, Susan, have lived there for 50 years. He said that he is a member of the Steering Committee of the College Heights Association, is a member of Building a Better Wellesley, which seeks to promote affordable housing in Wellesley, and helped to draft the Accessory Dwelling Unit (ADU) bylaw. He said since he has lived there, the majority of neighbors requested approvals for additions or renovations. He said that most of the houses required a finding that it would not be substantially more detrimental to the neighborhood. He said that he was not opposed to the concept of renovation and reasonable extension of 12 Curve Street. He discussed concerns about considerable intensification of the nonconformity in the right side yard setback and increasing the size of the house from 1,550 square feet to 6,780 square feet. He said that the Applicant has not shown that the proposed structure will not be substantially more detrimental to the neighborhood than the existing structure.

Mr. Bloom discussed documents that were submitted with the application. He said that in the Similar Properties of Note, only two of the 11 cited are in the immediate neighborhood. He said that one of them is a condominium project that is not in the same Zoning District. He said that in the Points to Note, it states that the size of the lot is double the square footage of most of the lots in the neighborhood. He said that 65, 68, 73, 76, and 85 Crest Road, 47 Curve Street and 28 Howe Street have larger lots than 12 Curve Street. He said that none has more than 3,700 square feet of living space and most of them have substantially less than that. He said that this project is too big and ill-considered for the neighborhood. He urged the Board to deny the special permit that was requested.

Mr. Himmelberger said that it is inappropriate to compare total living area with TLAG. He said that the size of the house will triple, not quadruple, from a little over 2,000 square feet of TLAG to 6,248 square

feet. He discussed visual impact to the neighborhood, water issues upgrade of 12 Curve Street, air and light between 12 and 14 Curve Street, and ledge outcropping on the property. He said that the Applicant will address stormwater to keep it on the site.

A Board member said that he walked the neighborhood and Curve Street. He discussed concerns about the size, even though he considered it to be a well-conceived addition.

A Board member said that the proposed structure will have an incredible impact to 14 Curve Street. He urged the Applicant to submit supplemental documents that the Planning Board typically sees for Large House Review (LHR).

The Chairman said that having four to five neighbors complain is very powerful because they are the ones who live there. He said that, as currently designed, he could not support this project. He said that it is too big for the lot. He said that the Board's job is to try to make houses on properties conform as much as possible.

Ms. Prall said that 10 to 12 neighbors support the project. She said that much of Howe Street doesn't view this property. She said that the condominiums across the street are located in a different district. She said that there are multiple buildings with 5,000 square feet of interior space including garage that are of similar size. She said that she is not trying to maximize for profit. She said that she is willing to put forth what the neighbors want to see for drainage. She said that she worked with the neighbors to address their concerns about parking and traffic during construction. She said that the proposed house is substantial but not detrimental because it maintains the character of the entire neighborhood and fits in perfectly. She said that they put the addition at the back because that is what the lot allows for. She said that they will not further encroach into the setbacks. She said that she reviewed the project with the Planning Board prior to submitting to the Zoning Board and they requested the ADU. She said that she's done everything that has been requested to uphold the integrity of the neighborhood.

The Chairman said that the proposed house doesn't fit the lot because it will violate the setback requirements. He said that it is an existing nonconforming structure and will be nonconforming, as proposed.

The Board voted unanimously to continue the matter to July 11, 2024.

July 11, 2024

Mr. Himmelberger said that at the previous hearing, one of the primary driving comments was that the right side was too close to the property line and was too large. He said that the right side has been reduced to a single gable and all of the structure will be outside of the setbacks, except for four feet of underground garage. He said that the TLAG was reduced from 6,690 square feet to 5,325 square feet. He said that while three gables remain on the left side, the one that is deepest into the lot is set back so that it is not particularly visible. He said that the ridge height will be raised two feet to 30.8 feet, which compares to 14 Curve Street, where the ridge height is 30.3 feet, and is located four feet uphill from 12 Curve Street. He said that this is an appropriate building on a significantly oversized lot. He said that the Applicant has committed to there being no full day parking on the street during construction. He said that

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the Applicant did not meet with the neighbors but took into account their comments from the previous hearing.

The Chairman said that the Board's concerns were not just the right side yard setbacks but also the massing and size of the house that they deemed inappropriate for the lot and the neighborhood. He said that the neighbors still have concerns about the revised plans. He said that the bulk of the house was reduced but it will still be one third over the TLAG threshold for a 10,000 square foot district. He said that LHR would require a stormwater plan that has been vetted by the town.

A Board member said that the reduction in bulk is a significant change. He said that the horizontal eyebrow that was eliminated from the right side elevation would be beneficial to mitigate the scale. He said that efforts were made to reduce the scale in the rear portion of the building. He said that it is a well designed building. He discussed concerns about how stormwater runoff will be handled.

Pamela Carr, 14 Curve Street, said that the overall bulk has not been greatly reduced. She said that a note from the Heights Condominium Association, 1 to 11 Curve Street, and a letter signed by neighbors consist of virtually all owner occupied homes on this end of the street and the majority of the neighbors. She said that the updated plans differ slightly from the plans presented at the previous hearing and the adjustments seem minor. She discussed concerns about the proposed size of the house in comparison to the houses in the neighborhood, encroachment into the side yard setbacks, and exacerbating the nonconforming front and side yard setback issues by adding a much taller and larger roof line that will block the sun and light to her home that sits only 18 feet away. She said that the proposed structure is still substantially more detrimental than the existing nonconforming structure. She said that the proposal before the Board is outsized so that the Applicant can make a profit at the expense of the immediate neighbors who have lived there for decades.

The Chairman said that the letter from the condo association said that it was pleased with some of the changes but still had issues with stormwater runoff, scale of the project and parking.

Mr. Boronkay said that the lot at 12 Curve Street can accommodate the large house. He said that the proposed project stands to benefit a lot of people in the neighborhood. He said that everything will be fully conforming except for the garage bump out. He said that they shrunk the house by over 1,000 square feet and pulled it in to comply with the setbacks.

The Chairman asked if any consideration was given to tearing the house down and pushing it back on the lot. Mr. Himmelberger said that house would be more objectionable because it would be taller, longer and right on the property line. He said that it is a narrow lot. He said that this is the type of house that would be approved under LHR. He said that they have agreed to a condition for a reduction of stormwater runoff and flow to the satisfaction of the town engineer, which is exactly what would be done for LHR.

A Board member said that he wanted to feel confident that the plans were shared and the concerns of the neighbors were met, as much as is practical. Mr. Himmelberger said that the most significant concern voiced by Ms. Carr was the massing on her side and the fact that the house was in the setback, too close to the property line. He said that those issues were addressed. He said that the TLAG was reduced by 1,300 square feet.

Ms. Carr said that if the Applicant had reached out, the neighbors would have told her that adding the third story in the nonconforming front yard setback and the shape of the roof were among their biggest concerns.

A Board member said that the proposed structure is 5,300 square feet, where the trigger for LHR is 3,600 square feet. He said that even though it is not LHR, it is something that is so substantial that the Board would like to see information regarding stormwater and landscaping, similar to what is required under LHR guidelines.

Mary Roberts, 21 Howe Street, said that people who live uphill are not just focused on what they can see but the whole view when they walk and drive around the neighborhood. She said that at the previous meeting, a number of people stressed the overall size being an issue. She said that the 1.62 percent increase shown on the TLAG Affidavit is really 162 percent. She said that the size of the house in an SR 10 district is quite a bit over the threshold.

A Board member asked that the Applicant compile a list of approved LHR reviews in 10,000 square foot districts in the past few years and the approved square footage of those houses

The Board voted unanimously to continue the petition to September 12, 2024.

September 12, 2024

Present at the public hearing were David Himmelberger, Esq., Jane Shoplick, Landscape Architect, David Boronkay, Architect, Justin Lamoreux, Strong Tree Engineering, and Kristen Dibella Prall, property owner.

Mr. Himmelberger said that at the July 11, 2024 meeting, the Board continued to express concerns regarding the proposed project and requested that in addition to further refining and scaling down the scope, that the Applicant submit a landscape and stormwater plan. He said that the Board asked for a list of Large House Review (LHR) projects in the SR10 district with TLAG in excess of 5,000 square feet. He said that the TLAG has now been reduced to 4,966 square feet, which represents a 25 percent reduction from the original proposal of 6,690 square feet. He said that of the 51 LHRs in 10,000 square foot districts, 22, or 43 percent, of them have been for TLAGs greater than 5,000 square feet.

Mr. Himmelberger said that five meetings were held with the neighbors. He said that there appears to be a significant divide between what the neighbors want and what the Applicant is seeking. He said that the rear addition which comprises the bulk of new TLAG is fully conforming with the exception of a portion of a sub-terranean garage that, as of the last Town Meeting, now requires a special permit. He said that no portion of the rear addition that is above ground will be in the setback. He said that the Applicant has done everything that the Board asked for. He said that they submitted a robust landscape plan and a stormwater plan to capture all excess runoff.

The Chairman said that the question is whether this is the right site for the house. He said that the neighbors' feeling is that it is too big for this neighborhood. He said that neighbors have to understand that abutters' properties can be redeveloped and there can be new structures there. He said that the

general reaction is against change but oftentimes once it has been there for a while, people look at it as if it has been there forever.

A Board member asked if the rendering of the proposed site at the front between 14 and 12 Curve Street accurately reflects the type of species and height of plant material that will be installed. Mr. Himmelberger said that the rendering shows proposed arbor vitae and existing trees. Ms. Shoplick said that the intent was to give a privacy screen between the two houses. She said that eight to ten foot high arbor vitae will be planted. She said that they will reach a maximum of 15 feet. She said that they can plant taller ones if the neighbor prefers. The Chairman said that arbor vitae tend to grow quickly, are very hardy and make a great screening. He said that they would only screen the first floor. Ms. Prall said that there is a grade change of approximately six feet, so it will be about 16 feet of screening.

Mr. Lamoreux discussed the drainage plan. He said that they accommodated the gutters and dripline by installing perforated pipe around the exterior of the foundation. He said that where they can't have gutters, runoff will discharge to the ground to perforated pipe with stone. Mr. Boronkay said that there was no opportunity for gutters on the original structure because of massing of the roof. He said that subterranean drain lines are the most efficient way to manage the runoff. Mr. Himmelberger said that the runoff will be captured by the underground drainage. Mr. Lamoreux said that the north roof will be collected and piped to a single diffuser on the right side of the plan. He said that the south is sized for the parcel itself, the entire roof and the tributary area to this property. Mr. Himmelberger said that the Applicant would accept a condition that the drainage plan be reviewed by the Department of Public Works.

Ms. Prall said that the side elevation of the house at 45 Howe Street is similar in elevation, roof height, look and feel. She said that 45 Howe Street and 12 Curve Street are almost identical in what faces Curve Street. She said that they are a nice complement to each other.

Pamela Carr, 14 Curve Street, said that a letter was signed by 15 neighbors and was further supported by an email from 11 residents of the College Heights Association on the end of Curve Street. She said that the 26 neighbors represent all owner occupied homes on this end of Curve Street and many on Howe Street. She said that the letter expresses their shared belief that the recently submitted architectural plans have changed imperceptibly and their opinion of the proposal has not changed. She said that they strongly believe that adding the height and volume in the nonconforming front and side yard setbacks is substantially more detrimental to the neighborhood and asked that the Board deny the special permit. She said that the Applicant had four conversations with eight neighbors, including herself and her husband. She said that all of the neighbors expressed the hope that the Applicant would eliminate the plan to add height and volume to the front of the house. She said that the TLAG is not in scale in with houses in neighborhood. She said that their shared primary concern is the proposed large façade that increases the mass and volume so close to the street instead of the open space allowed by the current structure's roof that is lower and tapers away from the road. She said that passersby and neighbors will feel the new looming bulk of a higher and wider vertical façade ten feet closer to the street than current Zoning rules allow. She said that the existing nonconformities will be exacerbated by these plans. She discussed concerns about height and bulk, proximity to her property, and loss of sun, air and light.

Jeff Winick, 25 Curve Street, said that he is new to the neighborhood. He said that one of the things that they liked about the neighborhood was the smaller homes and the feeling of the neighborhood. He said

that the proposed addition feels outsized for what the rest of the neighborhood has. He said that it is a nice design but it doesn't fit in the neighborhood and over fits the lot.

Frank Prall, 41 Howe Street, said that he a direct abutter and the Applicant's husband. He said that the expansion at 12 Curve Street will be an asset to the neighborhood. He said that portion of Curve Street is loaded with apartment buildings, condominiums and dilapidated houses. He said that he attended the first meeting with Ms. Carr and remembered that she had a problem with the height and proximity of the home to her property. He said that with each set of plans, the neighbors are changing what they have a problem with. He said that the addition was moved over from the property line and the height of the roof was shortened. He said that now the neighbors don't like the front.

The Chairman said that the Board's charge under the bylaw and the State Zoning statute is that the Board must find that the proposed alteration is not substantially more detrimental to the neighborhood than the current nonconforming structure, not that it is not substantially more detrimental to a neighbor. He said that any construction in any neighborhood will affect somebody to some extent.

A Board member said that the inclusion of information that the Board doesn't typically review for a special permit but is consistent with LHR to mitigate the impacts through advanced engineering and landscaping that is planned and prepared by professional consultants was helpful. He said that he was satisfied with the changes made over the three hearings and the data that was provided.

The Chairman said that the Board takes public comments very seriously. He said that it is the best evidence of what is substantially more detrimental to the neighborhood. He said that the Board is charged with making a determination in a neutral fashion.

A Board member asked about ledge removal. Mr. Boronkay said that they don't currently know about subterranean conditions. He said that there will be some ledge removal but the addition intentionally stays away from a large ledge outcropping.

Statement of Facts

The subject property is located at 12 Curve Street, in a 10,000 square foot Single Residence District, in a Water Supply Protection District, with a minimum front yard setback of 16.9 feet where 30 feet is required, a minimum left side yard setback of 14 feet and a minimum right side yard setback of 11.2 feet where 20 feet is required.

The Petitioner is requesting a Special Permit/Finding pursuant to the provisions of Section 3.8, Section 5.1 and Section 6.3 of the Zoning Bylaw that 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, left side yard and right side yard setbacks, in a Water Supply Protection District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Letter to Zoning Board of Appeals, dated 9/5/24, from David J. Himmelberger, Esq., a Plot Plan, dated 3/19/24, revised 7/10/24 & 9/6/24, stamped by John R. Hamel, Professional Land Surveyor #35029, Floor Plans and Elevation Drawings, dated 3/21/24, revised 7/2/24 & 8/27/24, TLAG Affidavit, dated 7/3/24, revised 8/28/24, Renderings, dated 7/3/24, prepared by Slocum Hall Design Group, Inc., a Landscape

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Plan, dated 9/9/24, stamped by Jane Shoplick, Professional Landscape Architect #1188, List of Direct Abutters, Similar Properties of Note, 8 Additional Homes with Similar TLA to Lot Ratio & Points to Note with email attachments, and photographs were submitted.

On April 30, 2024, the Planning Board reviewed the petition and recommended that a Special Permit 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 3.8 of the Zoning Bylaw for Water Supply Protection Districts.

It is the opinion of this Authority that construction of a two-story addition with less than required right side yard setbacks will 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 construction of a two-story addition with less than required right side yard setbacks, subject to the following conditions:

1. Prior to issuance of a building permit, the drainage design provided to the Board shall be reviewed and approved by the Department of Public Works.
2. The neighbors shall be advised prior to any ledge removal activity.

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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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 (rm)
Robert W. Levy, Acting Chairman

David G. Sheffield (rm)
David G. Sheffield

Derek B. Redgate (rm)
Derek B. Redgate

ZBA 2024-33
Applicant 12 Curve LLC
Address 12 Curve Street

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

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Wellesley
Massachusetts

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

