

**ZONING BOARD OF APPEALS**

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

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ZBA 2011-48

Petition of D. Michael Collins

11 Seaver Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday August 4, 2011 at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of D. MICHAEL COLLINS requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that enclosure of an existing conforming porch, demolition of an existing nonconforming landing and stairs and construction of a 107 square foot one-story addition with less than required right side yard setbacks, at 11 SEAVER STREET, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Record Owner of Property: Kendra Chencus & Kurt Somerville

On July 19, 2011 the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing were D. Michael Collins (the "Petitioner") and Kurt Somerville, homeowner. Mr. Collins said that the request is for a Special Permit for a less than 100 square foot addition that will be in the same location as the existing set of stairs and covered porch with a nonconforming setback of 12.8 from the side lot line. He said that 68 square feet of the existing house is currently nonconforming. He said that there is an existing detached garage to the northeast that is only 1.4 feet off of the side lot line.

Mr. Collins said that they went before the Wetlands Protection Committee (WPC) and received a negative determination of impact for this project on the brook. He said that they will submit the paperwork when it is received.

Mr. Collins said that the addition will be built on top of the existing driveway. He said that the foundation will be a series of concrete piers and columns to minimize impact to the brook. He said that they minimized the addition so that it will be no more nonconforming than the existing structure.

The Board confirmed that no new impervious surface will be created. The Board asked if there were any plans to improve drainage. Mr. Collins said that the exterior stair, as it currently exists, was rendered impassable during the winter because it was covered in ice. He said that the proposed addition will have a roof and a leader system to distribute runoff.

The Board asked about access to the garage. Mr. Somerville said that the driveway starts as a single lane and broadens towards the house where the proposed addition will be. He said that they can currently park

a car there and still get another car past it. He said that they will lose that but they will gain some living space.

The Board asked if the garage is used to park vehicles or for storage. Mr. Somerville said that they use it for both purposes. He said that the garage was built on the original foundation. He said that it was rebuilt five to seven years ago.

Mr. Collins said that there is no abutter to the right because it is Town of Wellesley land.

The Board asked when the existing nonconforming landing and stairs were built. Mr. Collins said that it looks as though the stair has been rebuilt. He said that he had one photograph that shows the old stone footing at the base of the stair. He said that might seem to indicate that there was some connection with the original structure and the stair. He said that the stone seems to be the same age as the stone foundation wall.

The Board asked if there were any prior Special Permits issued by the Zoning Board of Appeals. The Board said that it would not want to grant a Special Permit for a nonconformity that is based upon a structure that may not have gone through the proper processes. The Board said that the stair appears to be relatively new.

The Board said that uncovered steps of a certain size are allowed in the setback area. Mr. Collins said that there is a triangle of the existing house that is nonconforming. He said that the covered porch is greater than 50 square feet. The Board questioned if it was there legally.

Mr. Somerville said that a couple of the supporting beams appear to be original to the house. He said that he assumed that the covered porch has been there. The Board said that the existing porch appears to have reconstructed.

Mr. Somerville asked if there was any indication of when the doorway was in existence. He said that there is a 15 foot drop to the grade. The Board said that clearly it was there in 2002, as shown on the as-built certification form. The Board said that there is a Building Permit from 1985 that describes the work but the uncertified plot plan does not show it.

The Board said that if the covered porch and stair is not a legal nonconforming structure, the Board cannot base a Special Permit on it. The Board said that it would be a Variance. The Board said that the covered porch and stair may be grandfathered under certain circumstances, if it was built with or without a permit.

The Board discussed its authority to grant a Special Permit. The Board said that if the covered porch and stair impinge further on the setback, that would be a Variance, unless the Board determined that the encroachment is diminimis.

The Board said that it is likely that the covered porch and stair has been in place since 1985 since there is a Building Permit for it. The Board said that it did not understand the basis for that Building Permit, under today's standards. The Board said that it may have existed before 1985 but was not shown on the plans.

The Board said that there is a stone foundation that is consistent with the house.

The Board said that it was sensitive to the idea that the current homeowner did not create the situation but it did not want to set a precedent of allowing expansion of illegal structures.

The Board asked if the porch landing leads into the kitchen. Mr. Collins said that it does. He said that the only existing back door is located at grade at the back of the existing addition.

The Board discussed options for it to move forward with the Petition.

There was no one present at the Public Hearing who wished to speak to the petition.

The Board voted unanimously to continue the hearing for this petition to August 17, 2011.

August 17, 2011

Presenting the case at the hearing were Michael Collins and Kurt Somerville.

The Board said that it was struggling at the last Public Hearing with the legal basis for the porch that is to be enclosed. The Board said that it did find some further information. The Board said that there was a significant amount of information that used to exist but was lost or destroyed in a flood that occurred some years ago. The Board said that it was not convinced that it found the definitive answer to its question but it did find some information that supports the idea that the porch was pre-existing. The Board said that it received several letters from neighbors, including Mr. Seaborn and Mr. Donlon, that shed light on the issue as well.

Mr. Collins said that he had seen some of the plans that the Board referred to. He said that the 1983 plan refers to one of the re-buildings of the stair. He said that prior to 1983, the entry porch was there.

The Board said that there is also some evidence from the abutters that the stairway was there at least back to the 1960's.

The Board said that the evidence before it was not perfect but it had not found anything in the record that would contradict what the Petitioner was asserting.

The Board said that it determined at the previous Public Hearing that it could grant a Special Permit, contingent on the fact that the dimension establishing the nonconformity had been pre-existing or had a Special Permit. The Board said that it agreed that it had enough evidence to be able to find that the nonconforming porch and stairway were pre-existing.

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 11 Seaver Street, in a 10,000 square foot Single Residence District, with a house structure with a minimum right side yard setback of 12.8 feet and a minimum front yard setback of 24.2 feet and a garage structure with a minimum right side yard setback of 1.4 feet.

The Petitioner is requesting a Special Permit/Finding that enclosure of an existing conforming porch, demolition of an existing nonconforming landing and stairs and construction of a 107 square foot one-story addition 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 5/16/11, stamped by Dennis B. O'Brien, Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 6/15/11, prepared by D. Michael Collins Architect, and photographs were submitted.

On August 3, 2011, the Planning Board reviewed the petition and recommended that the Special Permit be granted, contingent on the review and approval of the project by the Wetlands Protection Committee or a determination that the work is not subject to the review of the Wetlands Protection Committee.

The 1935 Town Atlas depicted the porch landing and stairs in question. The 20 foot side yard setback requirements went into effect in 1940.

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 although enclosure of an existing conforming porch, demolition of an existing nonconforming landing and stairs and construction of a 107 square foot one-story addition with less than required right side yard setbacks is increasing a nonconformity, such increase shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Therefore, a Special Permit is granted for enclosure of an existing conforming porch, demolition of an existing nonconforming landing and stairs and construction of a 107 square foot one-story addition with less than required right side yard setbacks, subject to the following condition:

- A Negative Determination of Applicability issued by the Wetlands Protection Committee shall be submitted.

The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed construction 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.

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, Acting Chairman

Cynthia S. Hibbard

Robert W. Levy

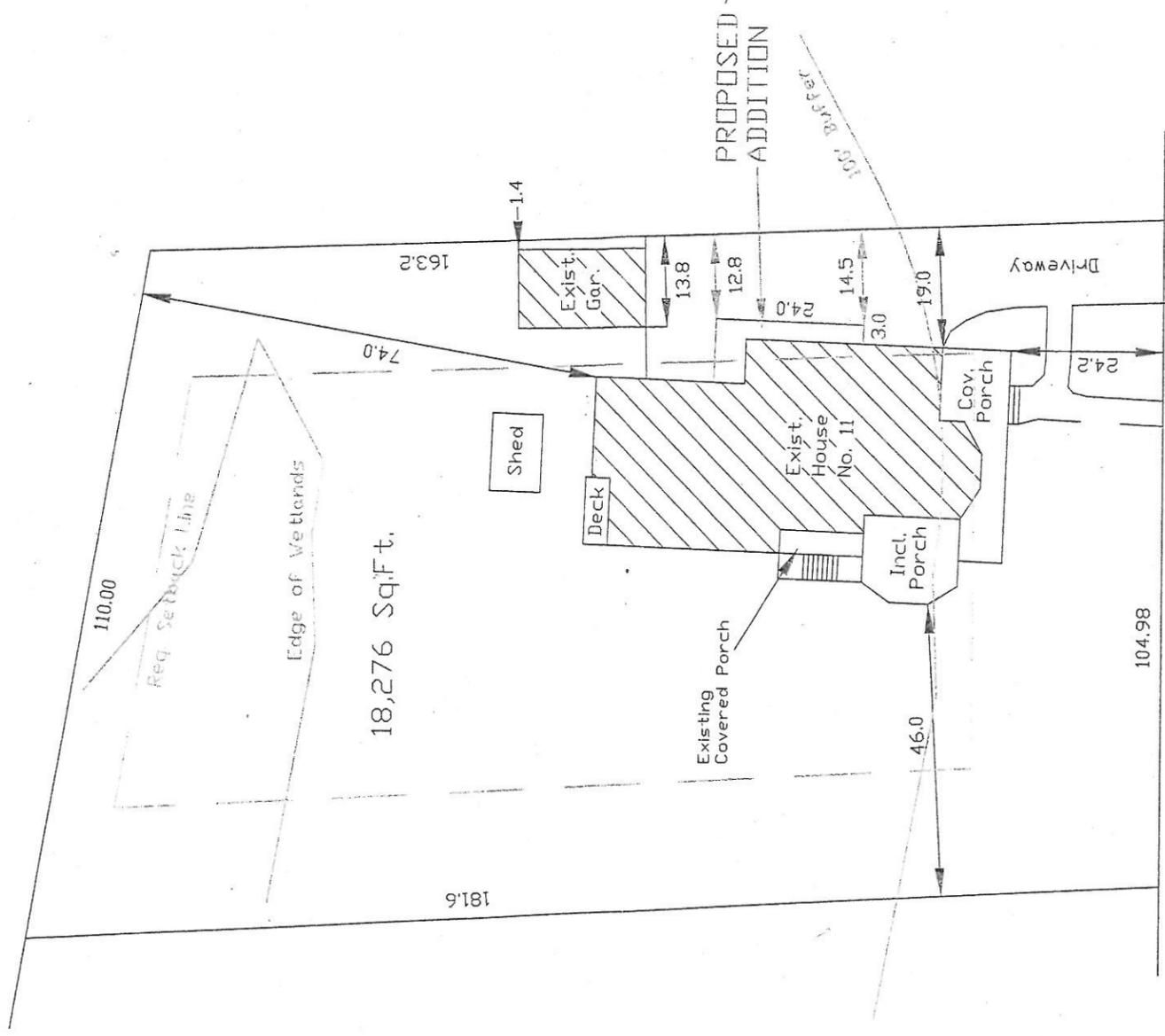
cc: Planning Board
Inspector of Buildings
lrm

PROPOSED LOT COVERAGE

House 1,637 Sf.
Garage 258 Sf.
Porches 491 Sf.
Shed 102 Sf.
ADDITION 107 Sf.

2,595 Sf. - 18,276 Sf. = 14.2%

PROPOSED ADDITION PLAN



SEAVER STREET

PLAN SHOWING PROPOSED ADDITION
IN

WELLESLEY, MASS.



Dennis O'Brien
Dennis O'Brien P.L.S.

Norfolk County

Scale: 1" = 20'

May 16, 2011

Dennis O'Brien P.L.S.

11 Concord Street Franklin, Mass. 02038

(508) 541 - 0048

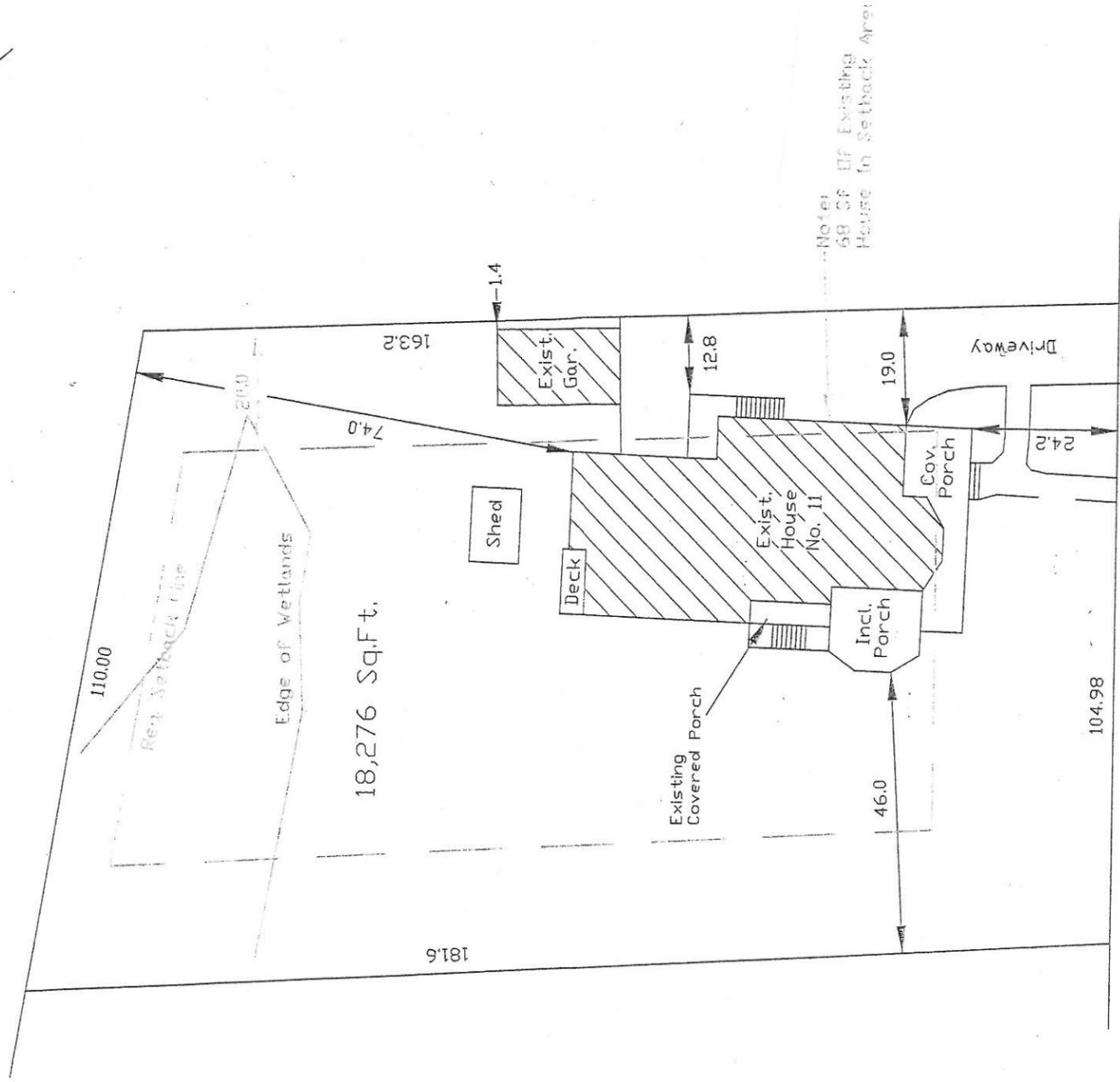


EXISTING LOT COVERAGE

House 1,637 Sf.
 Garage 258 Sf.
 Porches 491 Sf.
 Shed 102 Sf.
 2,488 Sf. = 13.6%
 18,276 Sf. = 13.6%

Caroline Brook

EXISTING CONDITIONS PLAN



Note: 68 SF of Existing House in Setback Area

SEAVER STREET

ZONING:	SR-10	REQUIRED	PROPOSED
AREA	10,000 Sq.Ft.	18,276 Sq.Ft.	
Min. FRONTAGE	60.00 Ft.	104.98 Ft.	
Min. FRONT YARD WIDTH	60.00 Ft.	104.98 Ft.	
Min. FRONT YARD DEPTH	30.00 Ft.	24.2 Ft.	
Min. SIDE YARD WIDTH	20.00 Ft.	12.8 Ft.	
Min. REAR YARD DEPTH	10.00 Ft.	74.0 Ft.	
MAX. LOT COVERAGE	20%	14.2%	
MAX. LOT COVERAGE	3,655 Sq.Ft.	2,595 Sq.Ft.	