



ZONING BOARD OF APPEALS

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

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ZBA 2015-68

Petition of Arthur Keigler & Gabriele Ganswindt

20 Pine Plain Road

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 WELLESLEY MA 02458
 2015 AUG 20 P 3:15

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, August 6, 2015, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of ARTHUR KEIGLER & GABRIELE GANSWINDT requesting modification of Variances pursuant to the provisions of Section XIVE, Section XIX and Section XXIV-D of the Zoning Bylaw for construction of a one-story structure with less than required left side yard setbacks, on an existing nonconforming structure with less than required left side yard and right side yard setbacks, on an 8,750 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, in a Water Supply Protection District, at 20 PINE PLAIN ROAD.

On July 21, 2015, 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 was Arthur Keigler, the Petitioner. Mr. Keigler said that he has owned the property since 1993. He said that the request is for a small bump out at the rear on the side. He said that they would like to add closet sized addition that will be 3.5 feet out from the house and 6 feet parallel to the house which allow them to create a mudroom/closet at the entrance so that they will not walk right into the kitchen. He said that lot coverage will increase from 20.5 percent to 20.8 percent.

Mr. Keigler said that he discussed the plan with the neighbors and they were okay with it. He said that the neighbors will not see the addition from their properties. He said that the immediately adjacent neighbor has a garage between this house and their house. He said that she does not have any windows looking in this direction.

Mr. Keigler said that the space that the bump out will occupy was part of a deck when they purchased the house. He said that they took the deck off of the back of the house.

The Board said that the original variance was for an addition on the house that was proposed to be 11 feet from the left side property line but was approved at 16 feet. Mr. Keigler said that the previous owner reduced the size of the addition. He said that this proposal is to not extend further into the side yard setback but only at the back. The Board said that the original house was a nonconforming house. The Board discussed making changes to properties that have variances. A Board member said that this is not changing the area affected by the variance. He said that it is a nonconforming house that has the benefit of a variance for an unrelated portion of the house. He said that if they never sought that variance or obtained it, this would be a special permit. Another Board member said that during the time that he was a

Zoning Enforcement Officer, he did take the position that if there is a variance, even if it is in a different location from the area at issue, one has to presume that the people who decided on the initial variance took all of those things into consideration and they might have made a different decision on this piece. He said that it is his opinion that because there was a variance for the property, this kicks it back as a modification of a variance.

Michael Zehner, Planning Director, said that the Planning Board struggled with that question. He said that Ms. Johnson brought it up that today it would not require a special permit. Mr. Zehner said that he tended to agree with the Zoning Board member who said that the resulting nonconformity that this is being added to was the result of a variance and therefore it is a modification of a variance and needs to be judged by the variance standards. The Zoning Board member said that he did not say that this would need to be judged by the variance standards. The Chairman said that the difficulty would be whether the Board would judge that by today's variance standards or the standards at the time the previous variance was granted. He said that they are vastly different. Mr. Zehner said that today's are the only standards on the books and the Board should grant modifications based on those standards. Mr. Keigler said that the place where they are proposing to construct the addition is within the space for the deck that was granted a variance in 1993. The Board said that it has to go on the assumption that the variance was properly granted in the first place. The Board said that no one appealed it and it exists.

The Chairman said that he could interpret modification of a variance in two different ways. He said that one way is for it to change the underlying variance. The Chairman said that another view is that there is a variance with something tacked on that is okay. He said that arguing on the first side, he would say that this is de minimis and if it had been in the original variance in 1975, the ZBA would have approved it as part of the variance. A Board member said that there is no basis for granting the variance today.

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 20 Pine Plain Road, on an 8,750 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, in a Water Supply Protection District, with a minimum left side yard setback of 16.3 feet and a minimum right side yard setback of 15 feet.

The Petitioner is requesting modification of Variances pursuant to the provisions of Section XIVE, Section XIX and Section XXIV-D of the Zoning Bylaw for construction of a one-story structure with less than required left side yard setbacks, on an existing nonconforming structure with less than required left side yard and right side yard setbacks, on an 8,750 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, in a Water Supply Protection District.

A Plot Plan, dated 6/26/15, stamped by Clifford E. Rober, Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 6/12/15, prepared by Giattino Design, and photographs were submitted.

On August 5, 2015, the Planning Board reviewed the petition and recommended that the Zoning Board of Appeals deny the variance.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The subject structure does not conform to the current Zoning Bylaw, as noted in the foregoing Statement of Facts.

It is the opinion of this Authority that modification of Variances pursuant to the provisions of Section XIVE, Section XIX and Section XXIV-D of the Zoning Bylaw may be granted for construction of a one-story structure with less than required left side yard setbacks, on an existing nonconforming structure with less than required left side yard and right side yard setbacks, on an 8,750 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, in a Water Supply Protection District, based on the determination that it is a minor modification that would not have likely impacted the granting of the previous variance, and if it was treated as a special permit, would not be substantially more detrimental to the neighborhood than the existing nonconforming structure. .

Therefore, modification of Variances is granted, as voted unanimously by this Authority at the Public Hearing, for construction of a one-story structure with less than required left side yard setbacks, on an existing nonconforming structure with less than required left side yard and right side yard setbacks, on an 8,750 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, in a Water Supply Protection District, 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, modification of the Variances 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, Acting Chairman

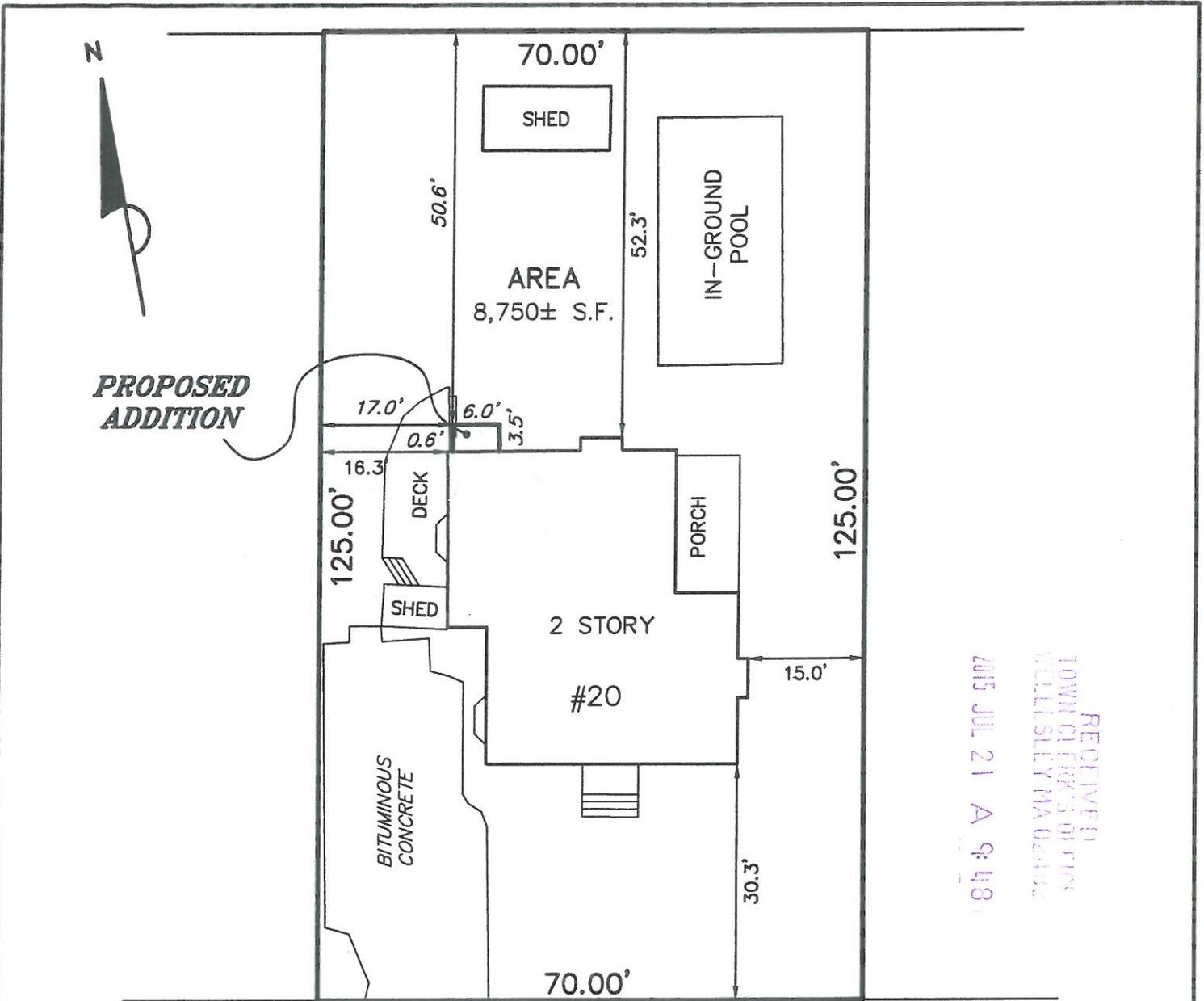


Robert W. Levy



Walter B. Adams

cc: Planning Board
Inspector of Buildings
lrm

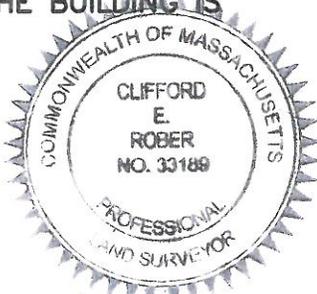


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PINE PLAIN ROAD

EXIST. LOT COVERAGE = 20.5%
PROP. LOT COVERAGE = 20.8%

I HEREBY CERTIFY THAT THE BUILDING IS
LOCATED AS SHOWN.



Clifford E. Rober
CLIFFORD E. ROBER, PLS DATE 6/26/15

THIS PLAN MAY HAVE BEEN ALTERED IF
THE SIGNATURE IS NOT SIGNED IN BLUE.

PROPOSED PLOT PLAN
#20 PINE PLAIN ROAD
IN
WELLESLEY, MA
(NORFOLK COUNTY)

SCALE: 1" = 20' DATE: 6/26/2015



ROBER SURVEY
1072A MASSACHUSETTS AVENUE
ARLINGTON, MA 02476
(781) 648-5533
4589PP1.DWG