



## ZONING BOARD OF APPEALS

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

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ZBA 2015-14  
 Petition of Benjamin & Kristen Haddon  
 25 Old Colony Road

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 ZONING BOARD'S OFFICE  
 WELLESLEY MA 02482  
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Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, February 5, 2015, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of BENJAMIN & KRISTEN HADDON requesting a Variance pursuant to the provisions of Section XIX and Section XXIV-D of the Zoning Bylaw for construction of a one-story garage with less than required front yard setbacks and a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that construction of a mudroom and construction of a one-story addition with less than required side yard setbacks, and construction of a one-story sunroom with less than required side yard setbacks, on a 16,898 square foot corner lot in a district in which the minimum lot size is 20,000 square feet, at 25 OLD COLONY ROAD, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On January 20, 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 were Benjamin and Kristen Haddon, (the Petitioner).

Ms. Haddon said that they moved from Maine this past summer. She said that it is a 1930's home on an undersized lot with existing nonconformities. She said that they are hoping to do a fairly large renovation of the house without altering the footprint very much. She said that the request is for a special permit and a variance. She said that there is a screened in porch on the right side, looking from Old Colony Road. She said that porch does not meet the setback requirement. She said that the plan is to enclose the porch and extend it without increasing the nonconformity. She said that on the left side of the existing house, part of it is nonconforming at the back yard. She said that it is 17.5 feet instead of the required 20 feet. She said that the plan is to demolish that small section and rebuild with the current existing nonconforming setback. She said that they are hoping to put an addition off of the back of the house for a kitchen addition which would go .3 feet into the rear yard setback. She said those issues are what they are seeking the special permit for.

Ms. Haddon said that they are requesting a variance for the garage. She said that the existing garage is on the basement level and is over one foot above the basement level, which presents a number of dangers. She said that if gas or oil spills in the garage, there is potential for it to leak into the basement. She said that they are hoping to add on a safer ground level garage. She said that due to a fairly large slope in the backyard, the garage needs to be in front of the house, which puts it closer to the street than what should

be allowed under the 500 Foot Rule. She said that there is a neighbor at 43.4 feet, which is the closest point within 500 feet on the street.

The Board confirmed that the assertion was that the 17.5 feet to the mudroom requires a special permit, not a variance. Ms. Haddon said that their architect felt that because it was the same amount of space as the existing nonconformity, that it would be a special permit. The Board said that is how it would typically treat it.

The Board said that in the letter of justification for the variance, the assertion is that the topography of the lot is the hardship. The Board said that the mudroom sticks into the slope more than the garage does. Ms. Haddon said that the topography where the mudroom is does not require a retaining wall of 4 feet. She said that if the garage were to be set back, their architect felt that a six foot retaining wall, as well as removal of a number of mature trees on the slope would have to happen.

The Board confirmed that it will be a two-car garage. The Board said that this two-car garage is approximately 26 x 24 feet. The Board said that if you respect the 43 foot setback and 20 foot rear or side yard on a corner lot setback, you cannot get a 24 foot garage in there without violating something. The Board said that if it was pushed back further, it would create a variance at the back in addition to the variance at the front.

The Chairman read the Planning Department Staff recommendation. Ms. Haddon asked for clarification of the basis for their recommendation.

A Board member said that potentially there is a shape issue. He said that the front lot line bows in. He said that the Board rarely sees variances for the 500 Foot Rule. He said that years ago someone did an exhaustive history of where the bylaw came from and the intent of it was for infill lots that were never developed so that house does not stick out in a row of houses. He questioned whether the Board would find this to be offensive if it was being considering under special permit criteria.

The Chairman discussed the Planning Staff recommendation and the assertion is that there could be a different shape garage with the driveway coming from Plymouth Road. Ms. Haddon said that was the original design. She said that when the garage is placed sideways, the driveway and garage eat into the slope which is filled with trees. The Chairman said that, from a topographical perspective, the bylaw does not say that if you have challenging topography, you are automatically allowed relief. The Board questioned if the garage could be angled.

Michael Zehner, Planning Department Director, said that if the variance is granted for this property, it essentially allows all other properties within 500 to build to that setback line.

The Board said that there are design choices. The Board said that if all of the advantages were on one option with none of the disadvantages, it would be a clear choice.

The Board said that the scale is very telling. The Board said that the design is not in your face. The Board said that it is a corner lot. The Board said that the shape of the lot could be criteria for a variance.

The Board said that a neighbor submitted a letter of support. The Chairman read the letter of support from the neighbor at 18 Old Colony Road.

The Board asked if the direct abutters had been shown the plans. Ms. Haddon said that they gave them all the plans and everyone was happy with them.

The Board discussed setting a precedent.

The Board discussed the grounds for a variance and topography, as the Applicant asserts, or any other criteria that would meet the justification in the bylaw.

The Board asked about pulling back the 17.5 foot setback. Ms. Haddon said that there is a second story there that they are not touching. She said that she was not sure how that would work structurally if they pulled it back. The Board said that if you slide the mudroom away from the rear lot line, it will eliminate the hallway into the house, unless you do something different on the other side.

The Board said that it is the closet corner of the mudroom that is in violation.

The Chairman said that the 17.5 setback is not an issue for the dimension because there is no change in the nonconformity. He said that the concern is topography and the mudroom. Ms. Haddon said that the garage is much larger going into the slope. The Chairman said that the mudroom is at a higher point. Ms. Haddon said that it is already flat where the mudroom is going to be. She said that there is a patio there and they will not have to chunk into the slope for the mudroom.

The Board said that they will have to raise the grade to get the new garage.

The Board said that the architecture and size is not like that on most undersized lots where there is flexibility. The Board said that the design works on the property.

The Chairman said that the question is if there is sufficient justification with shape of lot and topography to overcome the 500 Foot Rule. A Board member said that if the lot line was straight, it would be close to meeting the 500 Foot Rule. The Chairman said that, if not for the 500 Foot Rule, the rest of the project would be subject to the normal special permit review. The Board discussed hardship issues.

The Board discussed alternative solutions.

The Chairman said that he could not remember a case for a variance for the 500 Foot Rule. He said that he was not sure whether it was because there were so few cases or that nobody has been able to make a case due to soil condition, shape of lot or topography. He said that the Board has always been reluctant to grant variances. He said that there have been very few variances granted each year because the threshold is so high.

Mr. Haddon said that there is a new house going up on Arnold Road that is less than a quarter mile away that is probably 30 feet from the road. The Board said that is not within 500 feet of this house and the 500 Foot Rules does not apply for the two houses. Mr. Haddon said that there is precedent in the neighborhood.

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Ms. Haddon said that they are trying to save an old house. She said that they would prefer to not knock it down. She said that they tried to do a small addition to the footprint and tried to keep the feel of the house. She said that it is a very special house.

The Board discussed support for the variance.

here was no one present at the public hearing who wished to speak to the petition.

#### Statement of Facts

The subject property is located at 25 Old Colony Road, on a 16,898 square foot corner lot in a district in which the minimum lot size is 20,000 square feet, with a minimum side yard setback of 17.5 feet and a minimum side yard setback of 18.6 feet.

The Petitioner is requesting a Variance pursuant to the provisions of Section XIX and Section XXIV-D of the Zoning Bylaw for construction of a one-story garage with less than required front yard setbacks and a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that construction of a mudroom and construction of a one-story addition with less than required side yard setbacks, and construction of a one-story sunroom with less than required side yard setbacks, on a 16,898 square foot lot in a district in which the minimum lot size is 20,000 square feet, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan, dated 1/9/15, stamped by Joseph March, Professional Land Surveyor, Existing & Proposed Floor Plans & Elevation Drawings, dated 1/8/15, prepared by Rick Eifler, Architect, and photographs were submitted.

On January 29, 2015, the Planning Department Staff reviewed the petition and recommended that the petition be denied.

#### 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 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 and the topography of the land, which does not generally affect the zoning district that it is in, 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 XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw is granted for construction of a one-story garage with less than required front yard setbacks, in accordance with the submitted plot plan and construction drawings.

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LESLIE MA 02188

It is the opinion of this Authority that although construction of a mudroom and construction of a one-story addition with less than required side yard setbacks, and construction of a one-story sunroom with less than required side yard setbacks, on a 16,898 square foot lot in a district in which the minimum lot size is 20,000 square feet 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, as voted unanimously by this Authority at the Public Hearing, for construction of a mudroom and construction of a one-story addition with less than required side yard setbacks, and construction of a one-story sunroom with less than required side yard setbacks, on a 16,898 square foot lot in a district in which the minimum lot size is 20,000 square feet, 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 construction plans.

If construction has not commenced, except for good cause, this Variance shall expire one year after the date time stamped on this decision.

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.

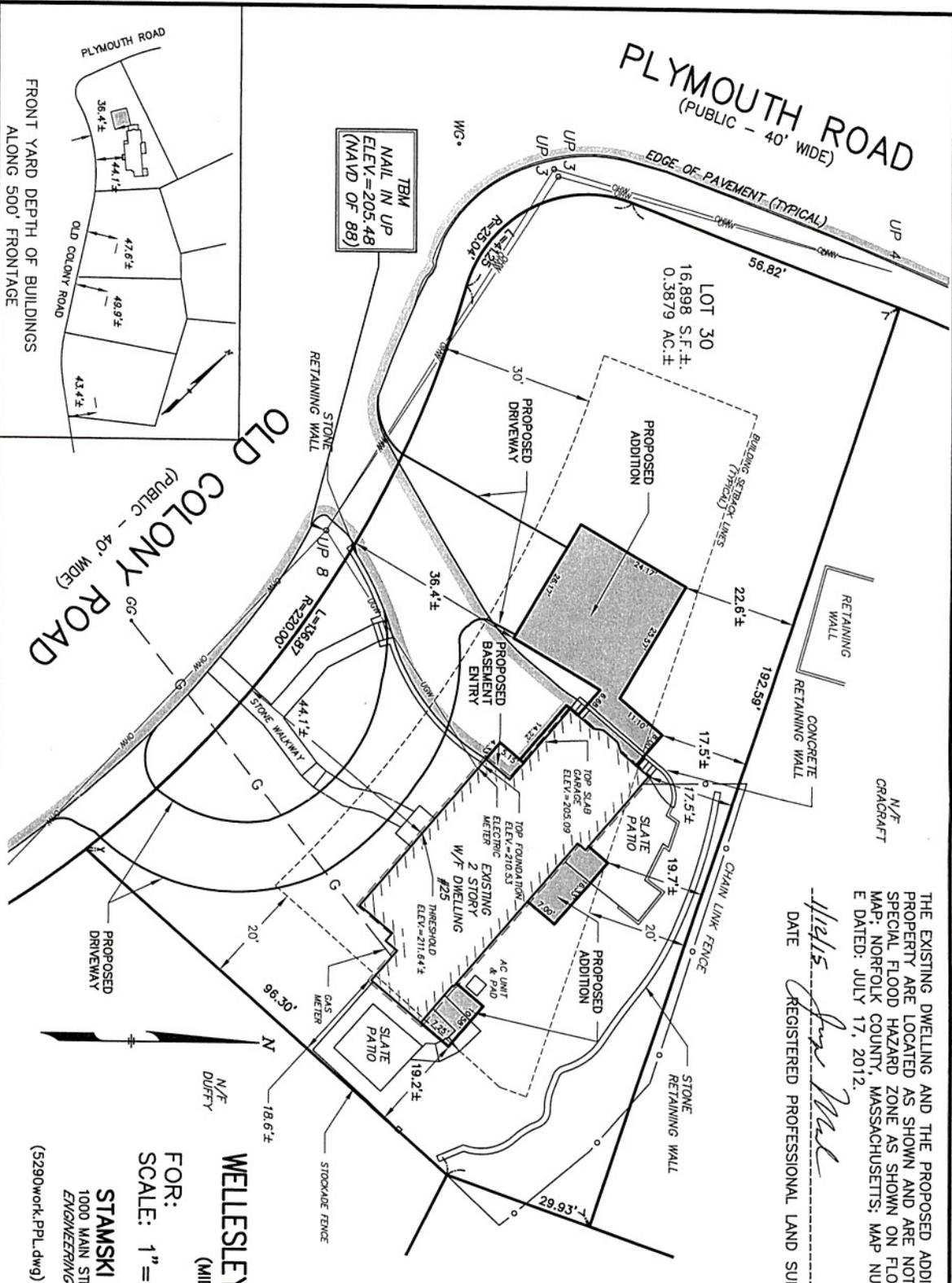
  
\_\_\_\_\_  
J. Randolph Becker, Acting Chairman

  
\_\_\_\_\_  
David G. Sheffield

  
\_\_\_\_\_  
Robert W. Levy

cc: Planning Board  
Inspector of Buildings  
lrm

**PLYMOUTH ROAD**  
(PUBLIC - 40' WIDE)



THE EXISTING DWELLING AND THE PROPOSED ADDITIONS ON THIS PROPERTY ARE LOCATED AS SHOWN AND ARE NOT LOCATED IN A SPECIAL FLOOD HAZARD ZONE AS SHOWN ON FLOOD INSURANCE RATE MAP: NORFOLK COUNTY, MASSACHUSETTS; MAP NUMBER 25016C0016 E DATED: JULY 17, 2012.

*Wells*  
DATE REGISTERED PROFESSIONAL LAND SURVEYOR



**ZONING DISTRICT**  
SR20 - SINGLE RESIDENCE 20

**TABLE OF BUILDING LOT COVERAGE**

EXISTING	1,468 ± S.F.	8.7%
PROPOSED	2,415 ± S.F.	14.3%

**WELLESLEY, MASSACHUSETTS**  
(MIDDLESEX COUNTY)

**FOR: HADDON**  
**SCALE: 1" = 20' JANUARY 9, 2015**

**STAMSKI AND McNARY, INC.**  
1000 MAIN STREET ACTON, MASSACHUSETTS  
ENGINEERING - PLANNING - SURVEYING

(529) 0work.PPL.dwg 25 Old Colony Road SM-5290

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