

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

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

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ZBA 2001-48

Petition of Perry Yee and Judy Moy
24 Buena Vista Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, June 28, 2001 at 7:30 p.m. in the Selectmen's Meeting Room (Conference Room B) at the Town Hall, 525 Washington Street, Wellesley, on the petition of PERRY YEE and JUDY MOY requesting a Special Permit/Finding pursuant to the provision of Section XVII and Section XXV of the Zoning Bylaw that the demolition of their existing nonconforming dwelling and detached garage and carport; and construction of a two-story 27 foot 8 inch by 57 foot dwelling, which conforms to all zoning setback requirements and percentage of lot coverage, on their nonconforming lot containing 9,000 square feet, at 24 BUENA VISTA ROAD, in a Single Residence District in which the minimum lot size required is 10,000 square feet, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On June 11, 2001, the petitioners 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 Perry Yee, who was accompanied by Bill Pybas representing Guaranteed Builders. Mr. Yee said they have a two bedroom bungalow and are in need of more space. The garage is also small. Either they can demolish the existing house, garage and carport and construct a new house, or build an addition, which would be more expensive and longer than the existing house. The new house would be a modular home built within the required setbacks.

The Board asked where the garage would be located. Mr. Pybas said the garage would be on ground level with a second floor above. Although the elevation drawing of the right side is inaccurate, the floor plan is correct.

The Board asked what would be the height of the proposed house. Mr. Pybas said it would be 27 feet. The existing house is about 18 feet. Many houses in the area are the same height as the proposed house. The existing house is nonconforming on the left side, but the new house will conform to all setback requirements.

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The Board read into the record a letter in opposition to the petition from Alan and Lisa Rogers, 5 Morses Pond Road, the rear yard abutters, which included a complaint about the parking of unlicensed and commercial vehicles on the property. The Board noted that the Rogers' house is a two-story dwelling, as are the homes to the right and left of the Yee property; and that the proposed house has been situated as far from the rear lot line as possible.

The Board asked about the number of vehicles referred to in the Rogers' letter. Mr. Yee said he owns 4 vehicles that are all registered and all have passenger license plates. The fifth vehicle, which is parked in the carport, belongs to his brother-in-law and will be removed.

The Board explained that the Wellesley Zoning Bylaw does not address demolition and reconstruction on an undersized lot, but the Mass. Zoning Act does address this issue in Chapter 40A, Section 6, and requires that the Board make a finding that the proposed reconstruction shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

The Board noted that the Planning Board had no objection to granting the request.

Susan Livingston, 27 Morses Pond Road, expressed support for the petition, stating that Mr. Yee's house is out of character with the neighborhood as it currently exists, as most of the homes have been improved and added to over the past few years. Martin Young, 21 Morses Pond Road, and Tanya Rovero, 1 Morses Pond Road, also expressed support for the petition.

The Board stated that not only will the new house conform to the left side line, but it will be lower at 27 feet than the allowed height of 36 feet.

Statement of Fact

The subject property is located at 24 Buena Vista Road, on a 9,000 square foot lot in a Single Residence District, in which the minimum lot size required is 10,000 square feet; and contains a nonconforming dwelling with a minimum left side yard setback of 11 feet and a detached garage and carport.

The petitioners are requesting a Special Permit/Finding that the demolition of the existing nonconforming dwelling, garage and carport and construction of a two-story 27 foot 8 inch by 57 foot structure at a height of 27 feet, which meets all the required zoning setbacks and percentage of lot coverage, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Two Plot Plans, one showing Existing Conditions and one showing Proposed Dwelling, dated June 5, 2001, stamped by Paul J. Coutu, Professional Land Surveyor; Floor Plans and Elevations dated May 24, 2001, drawn by Avis America; and photographs were submitted.

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On June 19, 2001, the Planning Board reviewed the petition and had no objection to the granting of the request as the proposed building appears to be in keeping with others recently built in the area.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The subject lot does not conform to the square footage required in the Single Residence District in which it is located, as stated in the foregoing Statement of Facts.

Section XVII of the Wellesley Zoning Bylaw states as follows:

“The rights concerning pre-existing nonconforming uses, structures and lots shall be as set forth in Section 6 of Chapter 40A M.G.L. (The Zoning Act) and as otherwise defined in this SECTION XVII.”

It is the finding of this Authority that as Section XVII of the Wellesley Zoning Bylaw recognizes “reconstruction” of pre-existing nonconforming dwellings only in relation to Section C. Disaster Rebuild., this petition must be decided pursuant to the second “except” clause of Section 6.1 of Chapter 40A M.G.L., which states as follows:

“except where such alteration, reconstruction, extension or structure change to a single or two-family residential structure does not increase the nonconforming nature of said structure.”

It is the finding of this Authority that the demolition of the existing nonconforming structure as well as the garage and carport; and the proposed construction of the two-story structure which conforms to all setback requirements and percentage of lot coverage, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure as it will neither intensify the existing nonconformance, nor will it create new nonconformity.

Therefore, a Special Permit is granted pursuant to Chapter 40A M.G.L. Chapter 6.1, as voted unanimously by this Authority at the Public Hearing, to demolish all existing structures on the property and to construct a two-story dwelling in accordance with the submitted Proposed Dwelling Plot Plan and construction plans, which are to be revised to depict the garage entrance on the right side of the proposed structure.

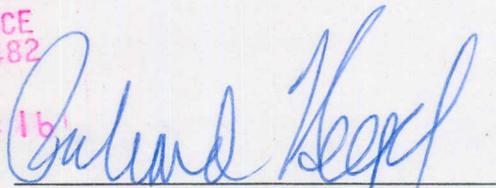
The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed construction plans in which the right side elevation is accurately depicted.

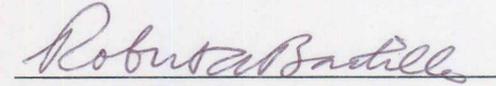
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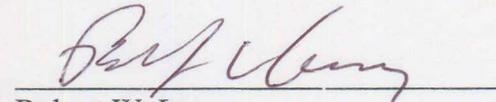
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APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN
THE OFFICE OF THE TOWN CLERK.

Cc: Planning Board
Inspector of Buildings
edg

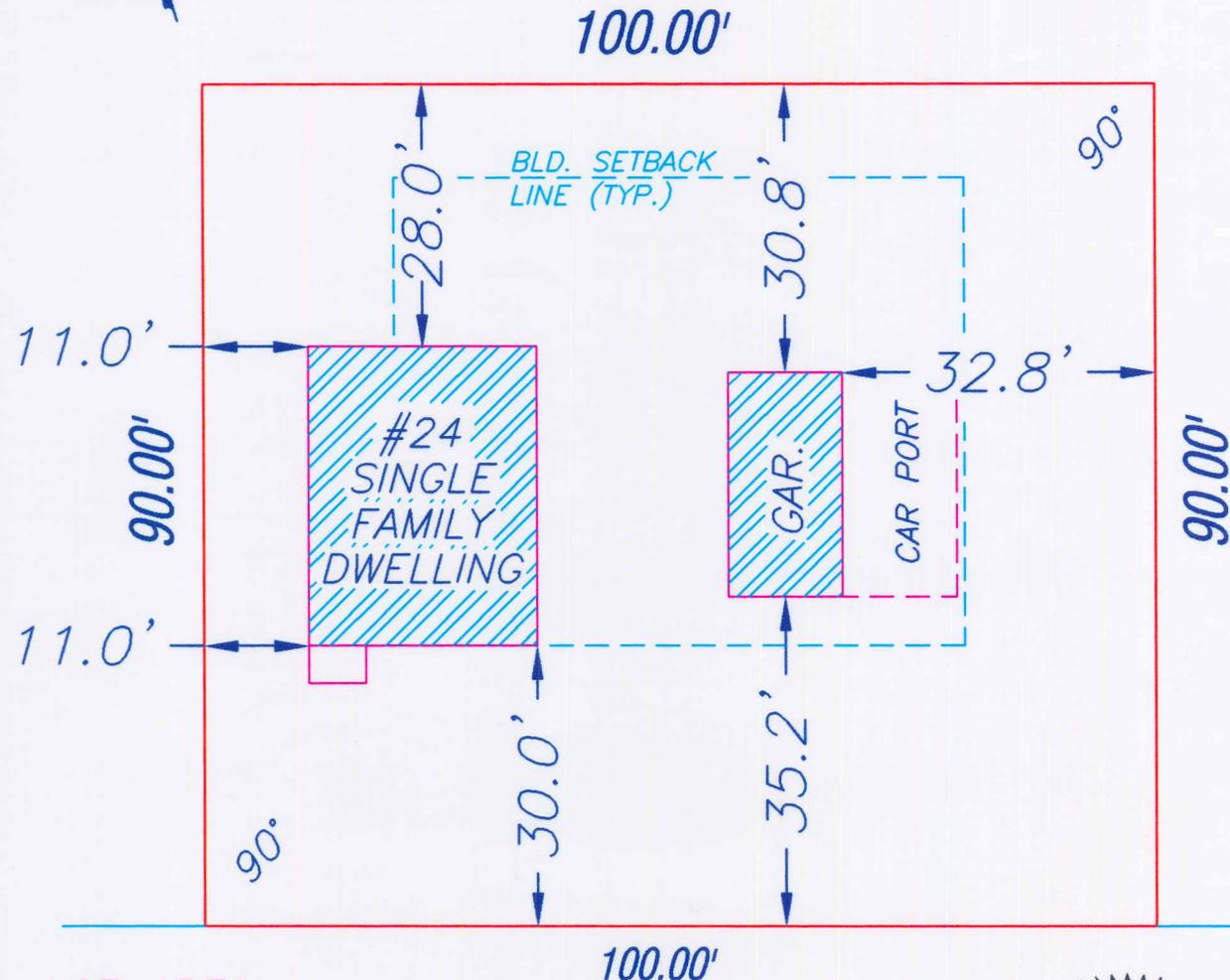

Richard L. Seegel, Acting Chairman


Robert A. Bastille


Robert W. Levy

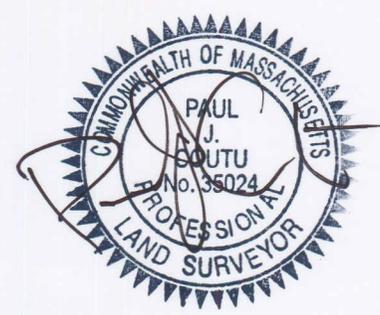
**SITE MAP
SHOWING
EXISTING CONDITIONS
24 BUENA VISTA RD.
WELLESLEY, MA
1"=20' JUNE 5, 01
PERRY YEE & JUDY MOY
Owners**

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LOT AREA
9,000 S.F.
EXISTING
COVERAGE
1,056 S.F.
12% COVERAGE

BUENA VISTA RD.
Prepared By:
Guaranteed Builders, Inc.
Engineering Div.
14 West St.
Douglas, Ma
800-462-4472



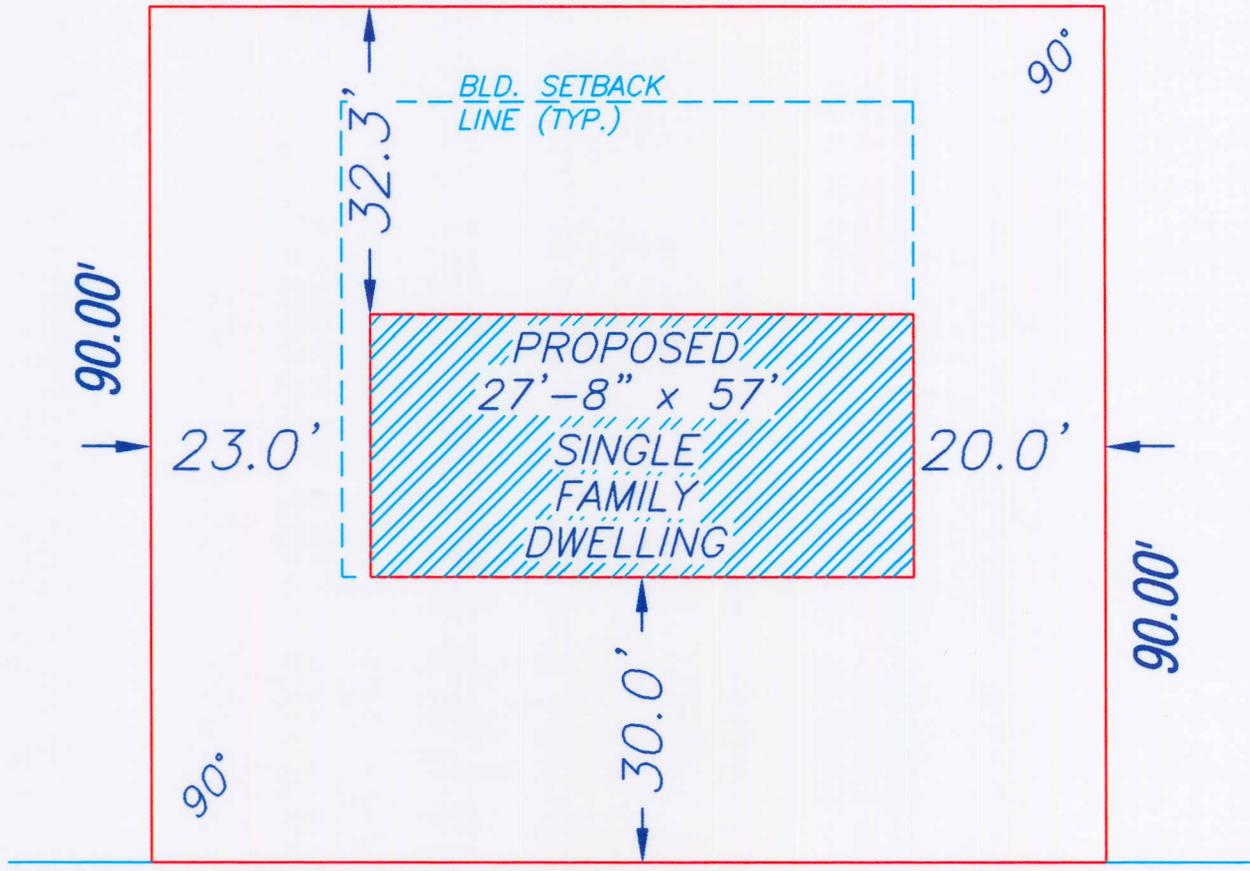
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**SITE MAP
SHOWING
PROPOSED DWELLING
24 BUENA VISTA RD.
WELLESLEY, MA
1"=20' JUNE 5, 01
PERRY YEE & JUDY MOY
Owners**



100.00'



100.00'

BUENA VISTA RD.

LOT AREA
9,000 S.F.
PROPOSED
COVERAGE
1,577 S.F.
18% COVERAGE

Prepared By:
Guaranteed Builders, Inc.
Engineering Div.
14 West St.
Douglas, Ma
800-462-4472

