

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

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

RICHARD L. SEEGEL, CHAIRMAN
CYNTHIA S. HIBBARD, VICE CHAIRMAN
DAVID G. SHEFFIELD

ELLEN D. GORDON
EXECUTIVE SECRETARY
TELEPHONE
(781) 431-1019 EXT. 208

ROBERT A. BASTIEN
J. RANDOLPH BECKER
ROBERT W. LEVY

RECEIVED
TOWN ENGINEER'S OFFICE
WELLESLEY, MA 02482
2004 MAY 11 P 2:15

ZBA 2004-24
Petition of Scott and D'Ann Hansen
11 Seaver Street

Pursuant to due notice, the Permit Granting Authority and the Special Permit Granting Authority held a Public Hearing on Thursday, May 13, 2004 at 7:30 p.m. in the Great Hall at the Town Hall, 525 Washington Street, Wellesley, on the petition of SCOTT AND D'ANN HANSEN requesting a variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw to allow construction of a detached one-car 12 foot by 21 foot garage, with less than the required right side yard setback, on the existing foundation with the same dimensions, at their nonconforming property at 11 Seaver Street, in a 10,000 square foot Single Residence District.

On April 27, 2004, 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 Scott Hansen, who said they had purchased the house in 2000, and have done extensive renovation and reconstruction. There had been a free standing 12 foot by 21 foot garage on the north side of the property, which had been torn down in 1985. The concrete foundation is still standing. They are requesting to rebuild the garage on this foundation. They have appeared before the Wetlands Committee, which agreed that the garage construction would not present a problem.

The Board read into the record the recommendation from the Planning Board to deny the variance, as none of the three statutory prerequisites for granting a variance are present. The garage would be an unreasonable encroachment on the required side yard setback, and a violation of the required 10 foot setback from Town Parkland. There appear to be alternatives to the proposed construction.

The Board expressed the opinion that a variance was not required and that the petition should be treated as a request for a Special Permit/Finding, as the foundation of the garage exists, and the Hansens would be reconstructing a nonconforming structure, which would require a Special Permit/Finding rather than a variance. The proposed structure would not be enlarged nor would it come closer to Town Parkland than the existing foundation. Mr. Hansen requested that the petition be treated as request for a Special Permit/Finding.

James Meade, 428 Washington Street, expressed opposition to the petition. Mr. Meade, a member of the Planning Board, said he had abstained from voting on the recommendation of the Planning Board.

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02482

Mr. Meade said that the garage had been demolished in 1985, and a permit issued for an addition, which included an underground garage. In 2002, the Hansens obtained a permit to add a second story. No Notice of Intent was filed with the Wetlands Committee at that time. The existing underground garage has been replaced by living space. The new garage would be inside both the 20 foot side yard setback and the 10 foot setback from Town Parkland.

The Board stated it had no jurisdiction over work previously done on the property under a prior building permit, to which no appeal had ever been taken. The only issue before the Board is the construction of a new garage on the existing foundation. An application for a Determination of Applicability was filed with the Wetlands Protection Committee, which issued a Negative Determination.

Mr. Hansen said the underground garage had not been used by the prior owners because it was dysfunctional. The turning radius was inadequate. The clearance of the garage door is 70 inches. The height of their SUV is 71 inches and does not fit into the garage.

Edward Donlon, 4 Seaver Street, said he had spoken to his neighbors at 2 and 10 Seaver Street, both of whom supported the petition. The garage construction would cure a longstanding neighborhood eyesore.

The Board asked why a portion on the left side of the property had been staked. Mr. Hansen said they are planning to build a bluestone patio and a stone wall, which will be checked by the Wetlands Administrator. They are also planning to remove some dead trees at the rear of the lot.

The Board suggested that the decision include a condition that the garage remain one-story in perpetuity, and that no plumbing ever be connected to the garage.

Statement of Facts

The subject property is located at 11 Seaver Street, on an 18,276 square foot lot, in a Single Residence District. The property contains a nonconforming dwelling with a minimum right side yard setback of 13.8 feet and a 12 foot by 21 foot garage foundation with a minimum right side yard setback of 1.4 feet.

In 1985, the 12 foot by 21 foot garage was demolished. The petitioners are requesting a Special Permit/Finding that the reconstruction of the 12 foot by 21 foot garage on the existing foundation shall not be substantially more detrimental to the neighborhood than the existing nonconforming foundation. There shall be no change in the footprint.

A Plot Plan dated March 17, 2004, stamped by Frank Iebba, Professional Land Surveyor; Elevation drawings dated March 18, 2004, prepared by Scott Hansen; and photographs were submitted.

On April 22, 2004, the Wetlands Protection Committee voted to issue a Negative Determination of Applicability for the rebuilding of the garage.

On May 11, 2004, the Planning Board reviewed the petition and was opposed to the granting of the request, stating:

“It does not appear that any of the three statutory prerequisites for the granting of a variance are present. The application represents an unreasonable encroachment on the required side yard

ZBA 2004-24
Petition of Scott and D'Ann Hansen
11 Seaver Street

setback and a violation of the required setback from Town Parkland. The bylaw is specific in stating in Section XIX.C, 'No existing building or structure shall be so altered as to result in the said building or structure being nearer than 10 feet to such public land.' The construction of a garage on the existing foundation will be more obtrusive and detrimental to the abutting Town Parkland with a setback of 1.4 feet.

The previous garage structure was removed nearly 20 years ago. It would seem that there are alternatives to the construction of the proposed garage. It is believed that a satisfactory garage meeting zoning requirements could be constructed on the lot."

Decision

It is the opinion of the Board, as discussed at the Public Hearing, that the request for a variance should be replaced with a request for a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw. The existing garage foundation does not conform to the current Zoning Bylaw, as noted in the foregoing Statement of Facts.

It is the finding of this Authority that the proposed reconstruction of the 12 foot by 21 foot garage on the existing foundation, with a minimum right side yard setback of 1.4 feet, shall not be substantially more detrimental to the neighborhood than the existing nonconforming foundation, as the proposed garage shall neither intensify the existing nonconformance, nor shall it create new nonconformity.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for construction of the garage on the existing foundation under the following conditions:

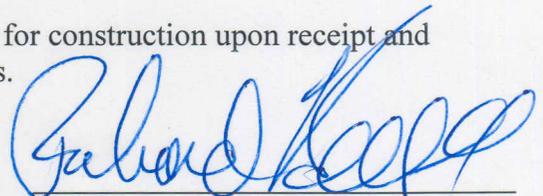
1. The garage shall remain one-story in perpetuity.
2. No plumbing connection shall ever be made to the reconstructed garage.

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.

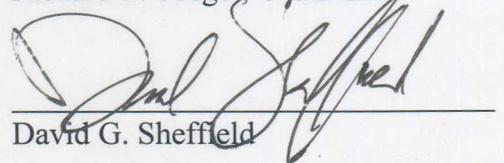
APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN
THE OFFICE OF THE TOWN CLERK

Cc: Planning Board
Wetlands Protection Committee
Inspector of Buildings

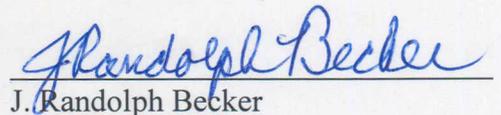
edg



Richard L. Seegel, Chairman



David G. Sheffield



J. Randolph Becker

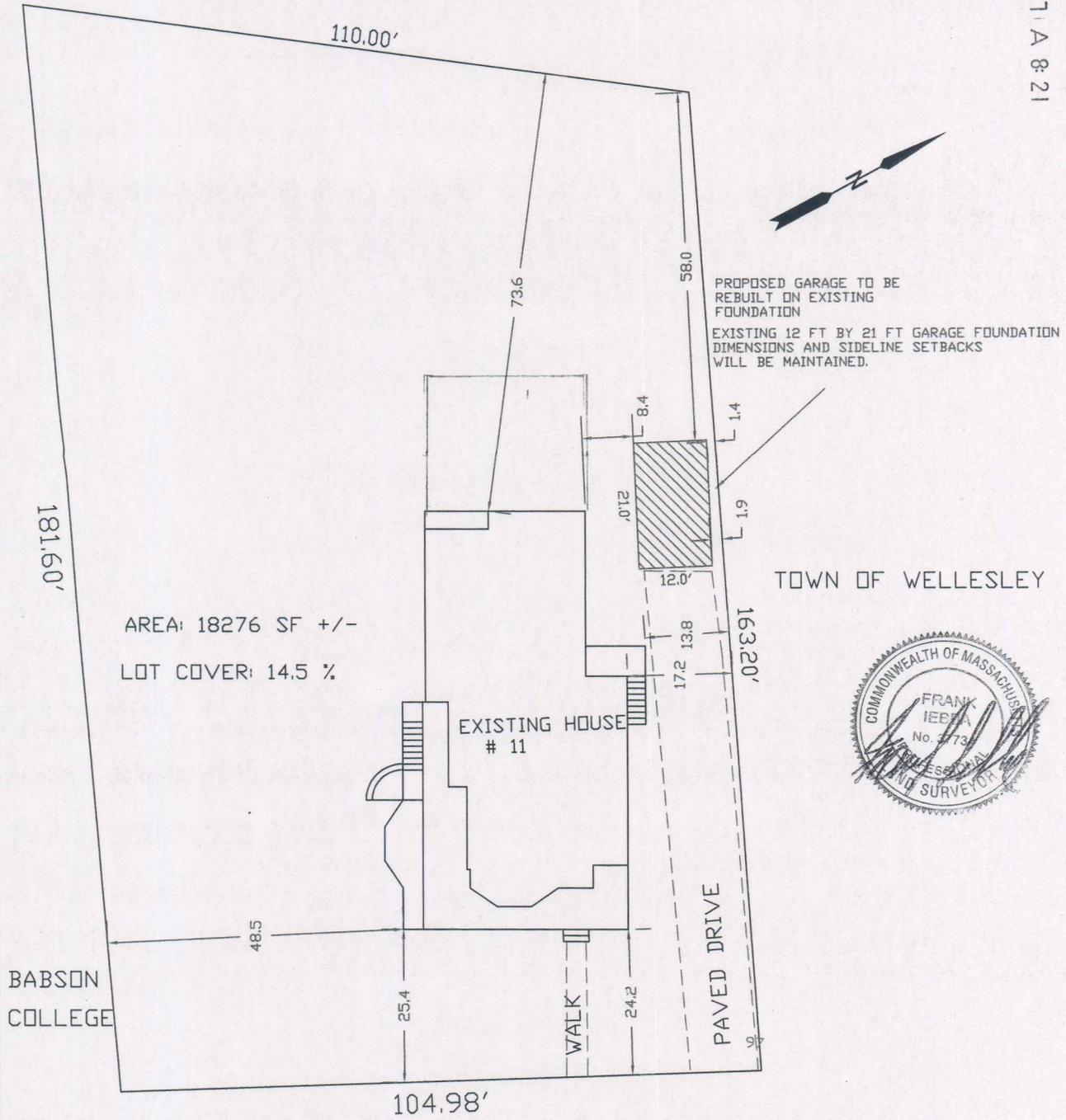
2004 MAY 21 11 P 2: 15

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02482

PLOT PLAN OF
 PROPOSED GARAGE ADDITION
 11 SEAVER ST
 WELLESLEY, MA
 SCALE: 1 IN = 20 FT
 MAR 17, 2004

TOWN OF WELLESLEY
 CAROLINE BROOK PATH

RECEIVED
 TOWN CLERK'S OFFICE
 WELLESLEY MA 02482
 2004 APR 21 A 8 21



SEAVER ST

ESSEX ENG. & SURVEY
 PO BOX 620622 NEWTON LOWER FALLS
 MA. 02462-0622

617-965-3975
 617-797-7342