

**ZONING BOARD OF APPEALS**

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ZBA 2008-54  
Petition of Wiswall Circle Condominium Trust  
16-18 Wiswall Circle

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Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, August 14, 2008 at 7:30 p.m. at the Town Hall, 525 Washington Street, Wellesley, on the petition of WISWALL CIRCLE CONDOMINIUM TRUST requesting a Special Permit/Finding pursuant to the provisions of Section IIIA, Section XVII and Section XXV of the Zoning Bylaw that construction of existing nonconforming decks with less than required setbacks from a property boundary abutting a Single Residence District, at 16 & 18 WISWALL CIRCLE, in a Town House District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structures.

On July 29, 2008, 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 George Carolan and Laurence Shind, Esq. Mr. Carolan said that he has lived in Wellesley for 40 years, the last eight of which have been at 16 Wiswall Circle. He said that he is the Chairman of the Board of Trustees of the Wiswall Circle Condominium Trust.

Mr. Carolan said that in 2006 the Condominium Trust decided to replace existing decks at the rear of the condominiums rather than patch and repair them. They decided to extend the 5 foot decks out by 2 feet. Structural drawings were prepared and New England Deck was selected as the contractor. The decks were completed in the summer of 2006. In May of 2007, Mr. Carolan received a call from Erik Tardiff in the Building Department advising him that the decks were built without a permit. Mr. Carolan said that he was unaware that the request for a building permit had been denied.

Mr. Carolan said that the Condominium Trust has made several attempts to rectify the situation. He said that the owner of New England Deck has left the State. He said that permits were re-filed with the Building Department. The decks at 16 and 18 Wiswall Circle do not meet the 30 foot setback requirements.

Mr. Carolan said that the request is for a Special Permit/Finding that the minor alteration of the deck design was not more detrimental to the neighborhood than the existing nonconforming structure. He said that, prior to reconstruction, the decks at 16 and 18 Wiswall Circle were 29.5 feet from the property line. The new decks are 27.5 feet from the property line.

Mr. Carolan said that he met with the Design Review Board, who voted to recommended approval of the petition. The deck design and construction comply with the State Building Code.

The Board asked about improving landscape along the fence area between the neighbors. Mr. Carolan said that there is a significant slope up. He said that there have been no issues with the neighbors.

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

#### Statement of Facts

The subject premises is located at 16-18 Wiswall Circle, in a Townhouse District, with a minimum rear yard setback of 27.5 feet.

The Petitioner is requesting a Special Permit/Finding that reconstruction of existing nonconforming decks with less than required setbacks from a property boundary abutting a Single Residence District shall not be substantially more detrimental to the neighborhood than the existing nonconforming structures.

A Plot Plan dated 5/6/08, stamped by Stephen T. LaMonica, Professional Land Surveyor, Deck Replacement Plans, dated 12/10/05 & 4/7/06, drawn by Bond Design Services, LLC, and photographs were submitted.

On August 14, 2008, the Planning Department staff reviewed the petition and had no objection to granting the request.

On June 27, 2007, the Design Review Board recommended that the Building Inspector approve the rear porches, as presented.

#### 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 finding of this Authority that although construction of nonconforming decks with less than required setbacks increased a nonconformity, such increase shall not be substantially more detrimental to the neighborhood than the existing nonconforming structures.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for construction of nonconforming decks with less than required setbacks, 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 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.

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Cynthia S. Hibbard, Acting Chairman

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Robert W. Levy

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David L. Grissino

cc: Planning Board  
Inspector of Buildings  
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