

**ZONING BOARD OF APPEALS**

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ZBA 2010-11  
Petition of Eric LaPlaca  
53 Windsor Road

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Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, February 4, 2010, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of ERIC LaPLACA requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that construction of a 30 foot by 36 foot two-story addition with a two-car garage underneath, and construction of a 3.7 foot by 16 foot one and one-half story addition with less than required left side yard setbacks, in a 20,000 square foot Single Residence District, at 53 WINDSOR ROAD, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On January 19, 2010 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 Eric LaPlaca (the "Petitioner"), who said that the plan is to add a 36 foot by 30 foot box on the back of the single family home and raze an existing garage. He said that they will be taking down a substantially sized garage that is very close to the property line. He said that the net increase of lot coverage will be .8%.

The Board said that the proposed addition at the back appears to meet all of the setback requirements.

The Board said that the small addition that is proposed on the left side of the house will not meet the setback requirements. The Board said that the addition would require a Variance.

Mr. LaPlaca said that he understood that to be in compliance he would need to move the proposed structure in a few inches. He said that they are taking away an egregious nonconformity and only asking for a small nonconformity.

The Board said that it has the option of making a finding that two inches is diminimus. The Board said that it would be difficult to approve a Variance. The Board said that the Petitioner could modify his plans. Mr. LaPlaca asked that the Board make a finding that the two inches are diminimus.

Mr. LaPlaca said that the plan is to extend the side of the existing house. He said that they would prefer that the addition go back straight.

The Board said that on Plan A2.02 there appears to be a jog out by the corner sink. Mr. LaPlaca said that it will not jog out. He said that the plan was not updated properly.

The Board said that it received comment letters from abutters expressing concerns about drainage and the 25 foot setback to the wetlands.

Mr. LaPlaca said that he is very concerned about the drainage. He said that it is a wet area, especially when there is winter runoff. He said that there is a drainage ditch on the right side of the home that catches runoff from the road. He said that water does sit in the area in front of the garage. He said that his civil engineer, Joyce Hastings, did a remediation plan. He said that they will be planting approximately 100 shrubs on the right side of the house and at the rear of the property. Mr. LaPlaca displayed the plan that was submitted to the Wetlands Protection Committee (WPC). The Board said that the plan appeared to use Best Management Practice.

The Board asked about the slope of the driveway. Mr. LaPlaca said that they will be changing the grades. The Board said that a curb could be added.

The Board asked if the trees at the edge of the property will be protected during construction. Mr. LaPlaca said that there will be a separation fence. He said that they will have to remove a tree and will have to cut back some limbs.

The Board asked if Total Living Area plus Garage Space (TLAG) calculations had been done. Mr. LaPlaca said that the addition will be 1800 square feet. He said that will bring the square footage of the house to 4200 square feet. The Board said that the threshold for Large House Review (LHR) is 5900 square feet in a 20,000 square foot Single Residence District.

The Board said that the footprint of the house is 2690 square feet. Mr. LaPlaca said that the upstairs will be smaller. He said that because of the Cape style construction they will make the second floor smaller to manage the rooflines. He said that there will be no second story over the Florida room at the rear of the house.

The Board asked about above ground basement space. The Board read a portion of Section XVID of the Zoning Bylaw.

The Board asked about the Variance that was granted in 1992. Mr. LaPlaca said that there is a one-story family room that is sunken off of the kitchen. He said that appears to have been added. The Board confirmed that the 17.5 foot setback to the stairs is existing. The Board said that the stair landing is over 25 square feet, so it is considered a structure. The Board said that a Variance would not be required.

The Board asked why the proposed structure could not be moved back 2.4 inches. Mr. LaPlaca said that it will change the design of the kitchen. He said that it will create a different project on that side of the house in terms of framing and how they will put the siding on. He said that the two inches will be of minimal consequence. He said that they will be increasing the conformity of the property.

Phil Ivey, 57 Windsor Road, said that he bought his house on Friday and moved in on Saturday. He said that he only learned about the project today. He said that he had no objection to the large addition at the back but he is concerned about the construction on the left side of the house.

Mr. Ivey distributed a photograph of the side of the house as viewed from his property. He said that his family room/kitchen faces the left side of 53 Windsor Road. He said that is a highly trafficked area of his house. He said that he was concerned about the wall being extended. He said that it will be more encroaching. He said that there will be an uninterrupted mass just outside their window.

Mr. Ivey said that he was concerned about setting precedents. He said that there are a number of older houses on Windsor Road.

Mr. Ivey said that he spoke with the Natural Resources office about the wetlands and stormwater runoff issues. He said that there will be an infiltrator fence at the end of the driveway that will trap water that is headed for the wetlands.

Mr. Ivey said that there is a significant water issue on his property. He said that they are at the bottom of the hill. He displayed a photograph of water pooling in front of the garage at 53 Windsor Road following a storm. He said that he was concerned that once a large structure is added in the middle of the yard there will be more water coming onto the driveway. He said that the existing driveway is not in good shape, so the water tends to stay there. He said that once the driveway is replaced the water may run off onto his property. He said that one way to address the issue would be to continue the infiltrator fence up to where the driveway turns. He said that he spoke with an engineer about having a convex drive that will act as a chute to direct the water where it is meant to go. He said that drywells might help.

The Board asked if Mr. LaPlaca has considered making the replacement driveway on the left convex to channel the water. Mr. LaPlaca said that he would consider it. He said that a certain amount of water probably does run off to the area that sits between the properties. He said that he does not want to create a funnel that makes a more extreme flow of water.

Mr. LaPlaca said that currently the water pools. He said that they will be building a siltation basin and putting in several plantings. The Board said that the roof on the addition will shed water to the back. The Board said that runoff to the driveway will not be increased. The Board said that Mr. LaPlaca should consider downspouts from the gutters to go to the siltation basin.

Mr. Ivey said that a large Hemlock tree will be removed. He said that will take away a lot of natural screening.

Mr. Ivey said that there was a large addition at the back of their house when they bought it. He said that the previous homeowner maintained the jog in when they constructed the addition.

Mr. Ivey said that the Variance that was previously granted had different concerns. He said that it was granted at a completely different time and place. The Board said that the Variance was granted for the stairway that now exists.

The Board said that it appears that the stormwater situation will be improved. The Board said that the garage will be taken down and that will reduce the impervious surface.

Nancy Westenberg, 50 Windsor Road, said that the ditch at the side of the house at 53 Windsor Road is actually a stream that starts at Bezanson's Pond at Centennial Park. She said that Maugus Hill drains to a separate stream. She said that the two streams meet a few houses away from 53 Windsor Road. She said that it is a very active wet area.

Ms. Westenberg said that when the 12,000 square foot home was built, a neighbor, Debra Raizman, observed that the Town DPW had to come to bail water out of the street. Mr. LaPlaca said that his project will have no effect on the stream.

Ms. Westenberg said that the lot at 53 Windsor Road does not have 100 feet of frontage. She said that the side setback is already five feet short.

Debra Raizman, 49 Windsor Road, said that she is the neighbor on the right. She said that she attended the WPC hearing and heard that the neighbors probably will have issues with the water but they will need to address them through legal channels. She said that the WPC is requiring the homeowner to do a lot of work at the rear of the property in exchange for three feet in the buffer area. She said that there are tree roots near the playroom area. She said that there is a very old Hemlock tree that screens between the houses. She said that she was concerned about the stream widening because of the loss of the tree and the roots.

Ms. Raizman said that the water table is high in her yard. She said that they put drywells in the back on the side away from 53 Windsor and uphill. She said that she can still see the water table at her driveway all of the time and it is always high.

The Board asked if trees will be preserved on the right side of the house. Mr. LaPlaca said that they will be. He said that they will be putting approximately 50 plantings there. He said that he has been at the house most days since August. He said that he has been vigilant of the stream on the right side. He said that the stream is dry at times. He said that it has a trickle most times. He said that there are issues following a storm.

The Board said that it encourages petitioners to discuss their plans with neighbors before the public hearing.

Mr. Ivey said that it will be a substantial detriment to have 39 feet of continuous mass.

Mr. LaPlaca said that they would not have an issue with having the addition set in two inches. He said that the view would not change much for the neighbor.

The Board said that the pre-existing nonconforming 17.5 foot setback will be intensified. The Board said that it is concerned about massive walls close to neighbors. The Board said that pushing the addition back 2.4 inches will re-introduce the corner board of the existing structure and help to break up façade.

The Board said that there will be a lot of vertical lines with the downspouts that are not shown on the plans. The Board discussed having the downspouts go to drywells.

#### Statement of Facts

The subject property is located at 53 Windsor Road, in a 20,000 square foot Single Residence District, with a minimum left side yard setback of 17.5 feet.

The Petitioner is requesting a Special Permit/Finding that construction of a 30 foot by 36 foot two-story addition with a two-car garage underneath, and construction of a 3.7 foot by 16 foot one and one-half story addition with less than required left side yard setbacks, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan dated 1/12/10, stamped by Joyce E. Hastings, Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 9/27/09, prepared by Konosky Associates, and photographs were submitted.

On February 3, 2010, the Planning Board reviewed the petition and recommended approval of the addition at the rear of the house and denial of the addition on the east side of the house.

On December 23, 2009, the Wetlands Protection Committee issued an Order of Conditions, MassDEP 324-634.

#### 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 a 3.7 foot by 16 foot one and one-half story addition with less than required left side yard setbacks is increasing a nonconformity, such increase shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

It is the finding of this Authority that construction of a 30 foot by 36 foot two-story addition with a two-car garage underneath that will meet all setback requirements shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure as it shall neither increase an existing nonconformity nor create a new nonconformity.

Therefore, a Special Permit is granted for construction of a 30 foot by 36 foot two-story addition with a two-car garage underneath, and construction of a 3.7 foot by 16 foot one and one-half story addition with less than required left side yard setbacks, subject to the following conditions:

1. The new structure on the left side of house shall be no closer than 17.7 feet to the side lot line.
2. The existing garage at the rear of the property and its foundation shall be removed.

3. Downspouts for the proposed addition at the rear of the structure shall empty into drywells.
4. The Order of Conditions, MassDEP 324-634, issued by the WPC, shall be incorporated in this decision.

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 G. Sheffield

cc: Planning Board  
Inspector of Buildings  
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