



ZONING BOARD OF APPEALS

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

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ZBA 2012-58 - Amended
 Petition of Ronna & Amir Dallal & Arie Zinger
 23 Thomas Road

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 WELLESLEY MA 02482
 2012 AUG -6 P 2:02

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, July 12, 2012, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of RONNA & AMIR DALLAL & ARIE ZINGER requesting a Special Permit/Finding pursuant to the provisions of Section XIVE, Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing shed and replacement with first floor living space with less than required right side yard setbacks, construction of new first floor living space at the front of the house with less than required left side yard and right side yard setbacks, construction of a new front entry, and construction of a second story addition with less than required left side yard, right side yard and rear yard setbacks, on a 4,891 square foot lot in a Water Supply Protection District in which the minimum lot size is 10,000 square feet, at 23 THOMAS ROAD, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On June 26, 2012, 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 Stanley Brooks, Esq., who said that he was representing Ronna and Amir Dallal and Arie Zinger (the "Petitioner").

Mr. Brooks said that the request is for a Special Permit for an addition and renovation of an existing nonconforming house on a nonconforming lot.

Mr. Brooks said that Thomas Road consists of 21 lots, two of which are conforming. He said that those lots are located at the corner of Weston Road.

Mr. Brooks said that the street was originally 5,000 square foot subdivision. He said that some lots were combined later.

Mr. Brooks said that the abutting property to the rear on Bryn Mawr Road has recently has some remodeling done. He said that Bryn Mawr Road is similar to Thomas Road with 21 lots, five of which are conforming.

Mr. Brooks said that there are a total of 42 lots on Thomas and Bryn Mawr Roads, seven of which are conforming. He said that many of the nonconforming lots on those roads have nonconforming structures on them. He said that many of the lots running westerly from 23 Thomas Road are less than 5,000 square feet.

Mr. Brooks said that over the years 16 lots have been issued Special Permits by the Zoning Board of Appeals (ZBA).

Mr. Brooks said that the legal standard in granting a Special Permit is the determination that the intensification shall not be substantially more detrimental to the neighborhood.

Mr. Brooks said that they held an open house for the neighborhood and it was well attended.

Mr. Brooks said that they discovered that there was a miscalculation in the original application of lot coverage due to the landings. He said that including the landings would have put the lot coverage over the amount allowed. He said that, subsequently, revised plans were submitted that pulled back the addition at the front of the house and pulled back the addition at the back of the house where there is an existing shed from the rear and right side yard setbacks.

Mr. Brooks said that the property is located in a Water Supply Protection District but there are no issues with the proposed project.

Mr. Brooks said that the lot was created in 1921 and the original structure was constructed in 1924, before the Wellesley Zoning Bylaw went into effect. He said that there have been subsequent Building Permits issued for interior changes.

Mr. Brooks said that the subject property remains the only single story house on Thomas Road.

Mr. Brooks described the existing encroachments. He said that on the left side, except for the bump out that will be removed, the setback will be just over 7 feet from the lot line at 25 Thomas Road. He said that along the common lot line with 25 Thomas Road is a driveway with a garage set back.

Mr. Brooks said that the second floor addition will respect the 7.1 foot left side yard setback. He said that it was stepped back to 13 feet in the front and 2 feet in the rear at the corner to break up the mass.

Mr. Brooks said that the house to the right at 21 Thomas Road built a second story addition with a 16 foot left side yard setback.

Mr. Brooks said that the existing gazebo will be removed.

Mr. Brooks said that the existing structure is not straight at the rear. He said that the setback varies from 9.3 feet to 9.7 feet from the rear lot line. He said that the proposed addition at the rear was stepped back at the right hand corner and is now more than 10 feet from the rear lot line.

Mr. Brooks said that the existing house has three rooms, a kitchen, a living room and a bedroom. He said that the lot is only 50 feet wide. He said that they were able to come forward with an addition because

there is sufficient front yard setback. He said that the proposal is to also go up because there is no other way to deal with this structure.

Mr. Brooks said that the request is for a Special Permit for the 13 foot by 24 foot two-story addition at the front that will still encroach into the left and right side setbacks. He said that the infill to square off the house at the right rear has been stepped in 2 feet from the rear existing setback. He said that the second story will not exceed 32 feet in height, according to the Architect, Peter Karb. He said that the roof will be adjusted, if necessary, to meet that dimension.

Mr. Brooks said that existing lot coverage is 22.44 percent or 1,098 square feet. He said that proposed lot coverage will be 24.64 percent or 1,205 square feet. He said that the lot coverage is fairly consistent with other houses to the right at 21 Thomas Road at 1,480 square feet, 25 Thomas Road at 1,126 square feet, across the road at 26 Thomas Road at 2,800, and to the rear at 17 Bryn Mawr Road at 1,924 square feet. He said that the house at 26 Thomas Road is a larger home on a larger lot. He said that the lot coverage for 17 Bryn Mawr was based on a recent addition where it was increased from 14 to 22 percent.

Mr. Brooks said that the design has been prepared to be as respectful as possible of the abutters, given the difficulty of the lot and the existing structure on the lot. He said that the second floor will consist of four small bedrooms. He said that this house will be small enough to accommodate a modern Wellesley family.

Mr. Brooks said that the Applicant has worked hard on this project. He said that the Applicant looked at many options including a teardown, which did not seem to fit the property or a snub nose garage at the front, which would be inconsistent with other structures in the neighborhood. He said that the Applicant tried to be sensitive to the impact to the neighbors. He said that the Applicant believes that the proposed additions will make the structure consistent in size with the houses on either side at two stories. He said that it is a modest addition. He said that they could have added an additional 13 feet at the front of the house. He said that it is tastefully designed and is consistent with the character with neighborhood. He said that they do not believe that the project will have any detrimental impact on the neighborhood as a whole.

Mr. Brooks said that the Applicant acknowledges that because of setback issues the project will have some impact on the neighborhood. He said that the object of the bylaw is not directed at individual properties. He said that the object of the bylaw is to preserve the character of the neighborhood as a whole. He said that although the bylaw does not define what is detrimental to a neighborhood, he said that provisions in the bylaw can give some guidance. He said that the Board might be inclined to find that the proposal would be detrimental to the neighborhood if it was out of scale or if it was inconsistent in design, significantly more dense, had significant runoff issues, significant traffic issues, or adverse affects on utility services. He said that none of those conditions exist here.

The Board asked that, in the research of the history of the parcel, was it possible to determine when the shed that is tucked in at the right rear of the property was initially constructed. Mr. Brooks said that he did not find that. He said that it may not have required building permit because it is less than 100 square feet.

Mr. Brooks said that the house is currently empty.

Mr. Brooks said in that the 1921 subdivision for the entire area there may have been a campground that existed. He said that over time some of the lots were combined.

Mr. Brooks said that there is a lot of architectural work that breaks up the visual impact shown on the Right Side Elevation Drawing, A5. He said that on both sides of the house are stockade fences or significantly dense plantings. He said that neither house is greatly visible. He said that the left elevation is stepped back at the front to create a visual break. He said that at the back infill area architectural features were added and the number of windows was limited to lessen the impact.

Mr. Brooks said that there is an Arbor Vitae hedge at the rear that was planted by the homeowners at 17 Bryn Mawr Road. He said that the hedge is fairly dense with 8 to 10 foot tall plantings. He said that the photographs submitted by Mr. Cockfield do not do justice to the density that exists there.

Mr. Brooks said that there is screening on all sides.

Mr. Brooks said that the houses at 21 and 25 Thomas Road are closer to the street. He said that this house will be set back further to lessen the visual impact.

Gavin Cockfield, Esq., said that he submitted a memorandum to the Board and to Mr. Brooks. He said that he wanted to review the key points. He said that the standard for granting a Special Permit is that the Board finds that the structure will not be substantially more detrimental. He said that the bylaw itself establishes what is protected or not protected. He said that the bylaw contains dimensional requirements that set forth a standard. He said that complying with the dimensional requirements implies not being detrimental. He said that the community has determined that if you have a 20 foot side yard setback, you are not being detrimental. He said that, on the other hand, if you are violating that setback, you are creating a detriment to the neighbors and the neighborhood.

Mr. Cockfield discussed nonconformities. He said that Mr. Brooks stated that there are only a small number of lots that meet the area requirements on Thomas and Bryn Mawr Roads. Mr. Cockfield said that many of those lots are not under 5,000 square feet. He said that many of those lots were doubled and are now just under 10,000 square feet. He said that there are many houses that are close to the compliant size. He said that this lot has less than half of the required size.

Mr. Cockfield said that he cited the *Bransford v Zoning Board of Appeals of Edgartown* case in his memorandum. He said that it talks about having a nonconforming structure on a nonconforming lot. He said that even if the structure meets all other Zoning requirements, the structure is nonconforming because it is on a nonconforming lot. He said that with any increase in either the footprint or the living area, you almost cannot reach the conclusion that it is not substantially more detrimental.

Mr. Cockfield said that the Town has decided that there is a particular standard. He said that you cannot build on a lot unless it is 10,000 square feet. He said that when there is a lot that is less than half that size, when the volume of the structure is increased, more detriment to the neighborhood is created.

Mr. Cockfield said that there is a 20 foot side yard setback requirement. He said that this lot has 50 feet of frontage. He said that a conforming house could only be 10 feet wide. He said that this house at the

rear is approximately 26 feet. He said that is a violation of the side yard setback. He said that when you increase encroachments in the side yards you are creating a detriment. He said that the structure as it exists is a detriment.

Mr. Cockfield said that his client abuts the rear of the property. He said that his client is affected by the rear yard setback. He said that adding a second story multiplies the amount of wall space in the violation area by at least twice. He said that doubling the size of the violation is a substantial detriment to the neighborhood. He said that violating the bylaw is detrimental to the neighborhood.

Mr. Cockfield said that in the *Goldhirsch* and *Bransford* cases they all recognized that when you increase the volume of the nonconforming structure, even without changing the footprint, you are increasing the nonconformity of the structure.

Mr. Cockfield said that the structure has less than required rear yard setbacks. He said that the requirement is 10 feet and there is 9.3 feet. He said that the existing house appears to be almost in his clients' living room.

Mr. Cockfield said that going out into the side yard setbacks and then doubling that area with more wall space and area than the bylaw allows creates a detriment.

Mr. Cockfield said that there is a hip roof on the back of the existing house. He said that the hip roof allows more sun into his clients' yard. He said that the proposed gable roof will create a large triangular area of wall. He said that they will be creating more area in the violation area, which is increasing the detriment. He said that by that definition alone, the Board cannot allow this project and allow the addition of the second floor.

Mr. Cockfield said that Mr. Brooks indicated that he did not know when the shed was built. He said that Mr. Brooks believed that it did not require a Building Permit. Mr. Cockfield said that Mr. Brooks does not know whether the shed complies with the bylaw. He said that the burden to establish that the shed complies with the bylaw is on the Applicant. He said that unless that was done, the area of the shed cannot be counted in the footprint.

Mr. Cockfield said that if the bylaw allows a shed of less than 100 square feet, it is saying that the shed is not living area. He said that the proposal is to take the shed out and replace it with a footprint with living area. He said that that will be adding additional side yard violations in the area where the shed used to be that will extend six feet into the side yard, dramatically increasing the setback violation. He said that ordinarily a difference of two, three or four feet might not make a lot of difference. He said that because it is only a 50 foot wide lot and it is 9 feet away from the lot line, the five or six feet start to make a lot of difference.

Mr. Cockfield said that the increase of the mass in all of the side yards is a substantial increase of the detriment compared to the existing nonconforming structure.

Mr. Cockfield read an excerpt from the Preamble of the Zoning Bylaw. He said that the bylaw protects residents by enforcing dimensional requirements.

Mr. Cockfield said that the Applicant should be required to submit a Shadow Study. He said that taking a single story building with a hip roof and raising the roof that close to the property line with a direct southern exposure, the sun will be behind the house and will cast a permanent shadow on the rear of his clients' property. He said that they will not know without a Shadow Study how far the shadow will extend. He said that is an interest that is protected by the Zoning Bylaw. He said that it is the Applicant's burden to establish to the Board that the proposed structure will not be substantially more detrimental to the neighborhood.

Mr. Cockfield said that there is one window at the back of the existing house. He said that the modified version of the site plans converts that to a larger window and doubles it. He said that it puts a bedroom on the second floor with a window and puts a rear entrance on the property. He said that because of the proximity with the 9 foot rear setback, the occupants will be looking into his clients' family room and into their master bedroom. He said that does not occur now. He said that although there may be a structure there, his clients currently do have privacy. He said that building a bedroom 9 feet from the property line will create a very real privacy issue.

Mr. Cockfield said that there will be an impact on the value of the property. He said that he was going to try to get a letter from a Real Estate Broker to address the likely impact on his clients. He read from a letter (retained by proponent) that stated that building a house so close to the rear property line is very likely to negatively impact the value of his clients' property. He said that the bylaw, in the Preamble, specifically recognizes that the bylaw is adopted to preserve property values. He said that is done by complying with the bylaw. He said that increasing the violations in the side yard setbacks, increasing the amount of mass that is in the backyard, changing the roofline and intruding on an area that is protected by the bylaw, substantially increases the detrimental impact.

Mr. Cockfield said that the photographs have not been altered and are reflective of the existing condition. He invited the Board to visit the property to view the Arbor Vitae hedge. He said that there will be a substantial increase in the intrusion of his clients' privacy and blockage of light and air onto their property.

Mr. Cockfield said that this proposal is asking to convert a shed into living area. He said that there is nothing under the bylaw that allows that. He said that the proposal is to go up and out further into the side yard. He said that no case has ever said that you can do that. He said that in doing so, there will be such a dramatic impact due to the smallness of the lot and the proximity of the other properties, he suggests that the Board has to conclude that there will be a substantial increase in the detriment with the proposed increase as opposed to the existing structure.

The Board questioned that if it accepted all of Mr. Cockfield's arguments, how could the Board ever change a nonconforming house on a nonconforming lot.

Mr. Cockfield said that when you are in the unfortunate circumstance of having a nonconforming house on a nonconforming lot, you can really only make some nominal changes. He said that he mentioned the *Gale v Board of Appeals of Gloucester* case in his brief. He said that he thought that it was inconsistent with *Bransford*. He said that *Gale* said that the Board could make a Section 6 Finding to allow a new house or increase.

Mr. Cockfield said that he listed in his memorandum all of the permits for expansion that were issued for structures on Thomas Road. He said that when the Board looks at a Special Permit for a lot that is undersized, it looks to see if the setbacks for the existing structure are conforming. He said that three-quarters of the permits that were listed in the memorandum make the analysis of encroachment into the setbacks. He said that it is an important concept because although you might be able to increase it, in this situation, they cannot really do it. He said that the lot is so small, there is really nowhere for them to go. He said that many other times, in the case of the permits cited in the memo, expansions have been allowed without exacerbating the nonconformities.

Mr. Cockfield said that in this case, the proposal is to increase both side yard violations and put more volume in the setbacks. He said that for his clients in particular, the wall would be more than doubled just over 9 feet from the property line. He said that is substantially more detrimental.

The Board said that Mr. Cockfield's memorandum clearly addressed the impacts to the property at the rear. The Board asked how the Board would apply that to the neighborhood. The Board said that it did not think that the bylaw talks about being substantially more detrimental to an individual but rather substantially more detrimental to the neighborhood, if the Board was to approve.

Mr. Cockfield said that his client is in the neighborhood. He said that with every other application that was heard tonight, the Board always looked at the impacts on the abutters. He said that the abutters are the most immediate and proximately affected. He said that if you had a standard that said that impacts on the abutters were not a concern but rather impacts on the neighborhood were, how would the Board ever reach the conclusion that the proposed increase is substantially more detrimental. He said that, in that case, the Board would allow virtually any increase.

Mr. Cockfield said that the abutters are part of the neighborhood. He said that if any one of them is significantly impacted, there is a significant increase in the detriment to the neighborhood.

Mr. Brooks discussed the definition of neighborhood. He said that Thomas Road and Bryn Mawr Road are similarly situated. He said that if the proposal was to build up to 36 feet in height and build right to the 30 foot front yard setback, that would be more detrimental. He said that when he looked at the snub nose garage design, he thought that it was not in keeping with the neighborhood.

Mr. Brooks said that the Zoning Bylaw, by establishing 10, 20, 30, 40 Zoning districts, established broader neighborhoods. He said that those areas are broken down into sub-units and streets. He said that he did not think that there is any case law that suggests that individual impact is the same as impact on the neighborhood. He said that the required standard is that the Board make a finding based on detriment to the neighborhood.

Mr. Brooks said that if the Board is concerned about the abutters to the rear, it should know that between 2010 and 2012, the abutters did a similar addition at the rear of their house. He said that they took their property from what was originally set back 22 feet and it brought five or six feet closer to the lot line and filled the area in.

Mr. Brooks said that with this petition there is clearly a question of intensification. He said that the Board has to determine whether or not this proposal is going to be substantially more detrimental to the

neighborhood. He asked how the Board makes the leap from shadows to one house to how that adversely affects the neighborhood.

Mark Finno, 26 Thomas Road, said that this is a good thing for Thomas Road. He said that nine families signed a petition to endorse the project. He said that they want to make sure that it happens. He said that he was representing the families who signed the petition. He said that it is currently the only one-story house on the street. He said that it is currently detrimental. He said that he lives directly across the street. He said what he looks at is an eyesore. He said that there should be a second floor so a family can move in. He said that they had a meeting with the residents on Thomas Road. He said that only one household did not attend. He said that all the residents who did attend the meeting did support the project. He submitted a petition signed by 12 residents of Thomas Road.

Mr. Finno asked that the Board respect the wishes of the neighborhood and not the wishes of an individual.

Kimberly McCann, 18 Thomas Road, said that she agreed with Mr. Finno that not granting approval for this project would be more detrimental to the neighborhood. She said that it is a one-story house that has been sitting there for numerous years. She said that she has lived on Thomas Road for 15 years. She said that when they moved in it was a rental unit in bad disrepair. She said that the first people who moved in and purchased it, renovated it and had plans drawn up for a second floor. She said that subsequent plans by new buyers called for a second floor. She said that the reason for a second floor is so that it can be a family home. She said that the neighbors want to have a family move in. She said that the Applicant made changes to the plans after meeting with neighbors. She said that she applauds the changes made after meeting with the owners.

Daniel Sciortino, 32 Thomas Road, said that the detriment is the existing structure. He said that it is an eyesore. He said that inside the house it is basically a one-bedroom apartment. He said that it has two and one-half rooms, a galley kitchen and bath. He said that it is not good for a family. He said that the ideal is to have a family move in. He said that would be good for the neighborhood.

Statement of Facts

The subject property is located at 23 Thomas Road, on a 4,891 square foot lot in a Water Supply Protection District in which the minimum lot size is 10,000 square feet, with a minimum left side yard setback of 7.1 feet, a minimum rear yard setback of 9.3 feet, and a minimum right side yard setback of 16.1 feet.

The Petitioner is requesting a Special Permit/Finding pursuant to the provisions of Section XIVE, Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing shed and replacement with first floor living space with less than required right side yard setbacks, construction of new first floor living space at the front of the house with less than required left side yard and right side yard setbacks, construction of a new front entry, and construction of a second story addition with less than required left side yard, right side yard and rear yard setbacks, on a 4,891 square foot lot in a Water Supply Protection District in which the minimum lot size is 10,000 square feet, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

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TOWN ENGINEER'S OFFICE
WELLINGTON, MA 02432

A Plot Plan, dated 6/15/12, revised 7/8/12, stamped by Frank Iebba, Existing and Proposed Floor Plans and Elevation Drawings, dated 6/14/12, revised 7/6/12, prepared by Peter J. Karb, Architect, and photographs were submitted.

On July 6, 2012, the Planning Department Staff reviewed the petition and recommended that the Special Permit be granted.

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 demolition of an existing shed and replacement with first floor living space with less than required right side yard setbacks, construction of new first floor living space at the front of the house with less than required left side yard and right side yard setbacks, construction of a new front entry, and construction of a second story addition with less than required left side yard, right side yard and rear yard setbacks, on a 4,891 square foot lot in a Water Supply Protection District in which the minimum lot size is 10,000 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 demolition of an existing shed and replacement with first floor living space with less than required right side yard setbacks, construction of new first floor living space at the front of the house with less than required left side yard and right side yard setbacks, construction of a new front entry, and construction of a second story addition with less than required left side yard, right side yard and rear yard setbacks, in accordance with the submitted plot plan and construction drawings and subject to the condition:

- The existing gazebo shall be removed.

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.

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ZBA 2012-58 - Amended
Petition of Ronna & Amir Dallal & Arie Zinger
23 Thomas Road

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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



Robert W. Levy



Walter B. Adams

cc: Planning Board
Inspector of Buildings
lrm

J. Gavin Cockfield

August 24, 2012

VIA FEDEX

Kathleen F. Nagle, Clerk
Town Clerk's Office
Wellesley Town Hall
525 Washington Street
Wellesley, MA 02482

Re: Notice of Service - G.L. c. 40A, § 17
Samuel Burns, et al. v. Wellesley Zoning Board of Appeals, et al.
Misc. Case No. 12 MISC 468461 (HMG)

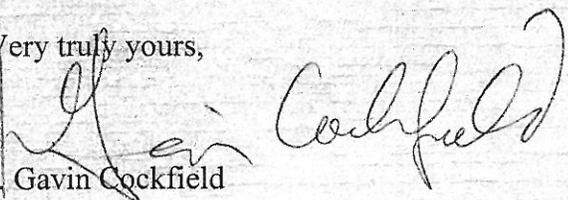
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TOWN CLERK'S OFFICE
WELLESLEY MA 02482
2012 AUG 27 A 9:03

Dear Ms. Nagle:

You are hereby notified pursuant to G.L. c. 40A, § 17, that the plaintiffs in the above-referenced action filed an Amended Complaint in the Land Court on August 24, 2012 appealing a decision of the Wellesley Zoning Board of Appeals, filed with your office on July 26, 2012, and the Amended Decision filed with your office on August 6, 2012, concerning the property located at 23 Thomas Road, Wellesley, Massachusetts. A copy of the Amended Complaint is enclosed.

Please acknowledge the date of your receipt of this letter on the copy provided as well as on the original and mail the copy in the envelope provided.

Very truly yours,


J. Gavin Cockfield

JGC/ew
Enclosures

cc: Client (Letter Only)

Kathleen F. Nagle, Clerk
Town Clerk's Office
Wellesley Town Hall
August 24, 2012
Page 2

DAVIS MALM &
DAGOSTINE P.C.
ATTORNEYS AT LAW

Received:

By: _____
Print Name: _____
Date: _____

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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

LAND COURT DEPARTMENT
C.A. NO. 12 MISC. 468461 (HMG)

SAMUEL BURNS & MEGAN BURNS,
PATRICK HAYDEN

Plaintiffs

v.

RICHARD L. SEEDEL, DAVID G.
SHEFFIELD, J. RANDOLPH BECKER,
ROBERT W. LEVY AND WALTER B.
ADAMS, all in their capacity as members
of the WELLESLEY ZONING BOARD
OF APPEALS, RONNA DALLAL,
AMIR DALLAL, and ARIE ZINGER,

Defendants.

AMENDED COMPLAINT
(G.L. c. 40A, § 17 & G.L. c. 30A)

7/17 AUG 27 11 A 9 00

RECEIVED
JULY 27 2012
WELLESLEY TOWN CLERK

This is a G.L. c. 40A, § 17 appeal of the issuance of a special permit by the defendant, Wellesley Zoning Board of Appeals (the "Board") with respect to property located at 23 Thomas Road, Wellesley, Massachusetts to defendants Ronna and Amir Dallal and Arie Zinger. The special permit impermissibly allows the expansion of an allegedly nonconforming structure in a manner that is substantially more detrimental to the neighborhood as compared to the existing structure and which substantially increases the existing nonconformities of the subject home. This Amended Complaint concerns both the Board's original decision and an amended decision it filed with the Wellesley Town Clerk on August 6, 2012. Count III is a claim under the Open Meeting Law.

PARTIES

1. The plaintiffs, Samuel and Megan Burns are husband and wife who own and reside at the single-family home located at 17 Bryn Mawr Road, Wellesley, Massachusetts. Both of the Burns are registered voters in the Town of Wellesley, Massachusetts.
2. The plaintiff, Patrick Hayden is a registered voter in the Town of Wellesley, Massachusetts. Mr. Hayden is only a plaintiff as to Count III of this Amended Complaint.
3. The individual defendant members of the Board are named in their capacity as members of the Board and their addresses are as follows:
Richard L. Seegel, Chairman, 63 Garden Road, Unit G-5, Wellesley, MA 02481;
David G. Sheffield, 76 Parker Road, Wellesley, MA 02482;
J. Randolph Becker, 60 Seaver Street, Wellesley, MA 02481;
Robert W. Levy, 21 Royalston Road, Wellesley, MA 02481; and
Walter B. Adams, 36 River Ridge, Wellesley, MA 02481.
4. The defendants, Ronna and Amir Dallal and Arie Zinger (collectively, the "Applicants") are individuals that own the property located at 23 Thomas Road, Wellesley, Massachusetts (the "Property"). Ronna and Amir Dallal reside at 23 Chestnut Place, Brookline, Massachusetts 02445. Arie Zinger resides at 42 Bryon Road, Chestnut Hill, Massachusetts 02467.

FACTS

5. The Applicants applied to the Board for a Special Permit under Sections XVII and XXV of the Wellesley Zoning By-law ("By-law") seeking a determination that a proposed addition to their nonconforming property would not be substantially more detrimental to the neighborhood as compared to the existing home (the "Application"). Specifically, the

Applicants propose to demolish an existing shed and replace it with first floor living space, construct new first floor living space in the front of the house, construct a new front entry, and construct a second-story addition, all of which will encroach into the required yard setbacks (the "Project").

6. The Applicants allege that the existing structure is nonconforming as to side yard setback, minimum required frontage, rear yard setback, and lot size.
7. The Property consists of only 4,891 square feet of lot area in a zone that requires 10,000 square feet.
8. The Property only has 50 feet of frontage where 60 feet is required.
9. The Property does not meet the 10-foot rear yard setback requirement.
10. The Property does not comply with either of the required 20-foot side yard setbacks. The Property only has 50 feet of frontage and width.
11. The Project will increase the footprint of the home in the rear and side yard setback areas.
12. The existing home is a single-story structure. The Project will add a second story, thereby significantly increasing the mass already existing in the rear and side yard setback areas.
13. The plaintiffs' home is located directly abutting and behind the Property. The Project will greatly increase the amount of mass in the rear side yard area and overshadow the plaintiffs' home. It will substantially impact the plaintiffs' privacy, the existing light and air, and the value of their property.
14. The Board held a public hearing on the Application.

15. The plaintiffs appeared at the hearing and presented evidence and argument as to why the Board could not make the findings needed to issue the requested special permit.
16. The Board closed the public hearing, voting that the proposed changes were not substantially more detrimental than the existing structure. The Board did not vote on any supplemental factual findings necessary to support its ultimate finding.
17. On July 26, 2012, the Board filed a copy of its decision with the Wellesley Town Clerk (the "Decision"). An attested copy of the Decision is attached to the original complaint as Exhibit A.

COUNT I
G.L. c. 40A, § 17 APPEAL

AUG 27 11 A 9 01 AM

18. The plaintiffs reallege and incorporate as if stated herein the allegations contained in the foregoing paragraphs.
19. The Board committed an error and acted in excess of its discretion and authority in granting the special permit because (i) the Project will be substantially more detrimental to the neighborhood as compared with the existing structure; (ii) the Project will increase the existing nonconformities of the structure; (iii) the Project will create new nonconformities; and, (iv) on information and belief, at least part of the existing structure (the shed) is not a protected nonconforming structure.
20. The Decision is facially invalid because the Board failed to make the required factual findings.
21. The plaintiffs are aggrieved by the Decision.

COUNT II
G.L. c. 40A, § 17 APPEAL

22. The plaintiffs reallege and incorporate as if stated herein the allegations contained in the foregoing paragraphs.
23. On August 6, 2012, filed another decision ("Amended Decision") concerning the application, an attested copy of which is attached hereto as Exhibit A.
24. The Amended Decision does not reflect that it is an amended decision.
25. The Board's Executive Secretary indicated that the Amended Decision adds language concerning the rear yard setback encroachments. Attached hereto as Exhibit B is a true and accurate copy of an email with redline of the original decision indicating the changes in the two decisions.
26. The Board did not vote on any of the findings contained in the Amended Decision.
27. The Board did not convene a new public hearing prior to issuing the Amended Decision.
28. The Amended Decision reincorporates the Board's prior errors set forth above.
29. The plaintiffs are aggrieved by the Decision.

COUNT III
VIOLATION OF G.L. c. 30A, §§ 18-25

30. The plaintiffs reallege and incorporate as if stated herein the allegations contained in the foregoing paragraphs.
31. On information and belief, the Board did not comply with the requirements of the Open Meeting Law, G.L. c. 30A, §§18-25 in issuing the Amended Decision.

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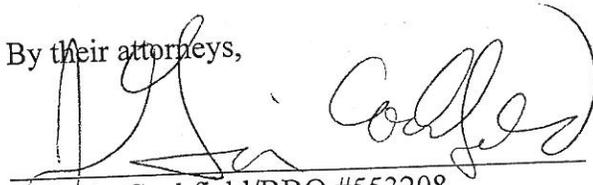
WHEREFORE, the plaintiffs respectfully request that this Court issue a Judgment:

- a. annulling the special permit;
- b. Annuling the Amended Decision; and
- c. granting such other relief as justice or equity may require.

RESPECTFULLY SUBMITTED,

SAMUEL AND MEGAN BURNS,

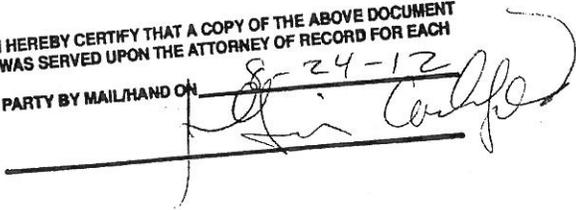
By their attorneys,



J. Gavin Cockfield/BBO #553208
Kendra Kinscherf/BBO #670472
Davis, Malm & D'Agostine, P.C.
One Boston Place
Boston, MA 02108
(617) 367-2500
jcockfield@davismalm.com
kkinscherf@davismalm.com

Dated: August 24, 2012
630005.1

I HEREBY CERTIFY THAT A COPY OF THE ABOVE DOCUMENT
WAS SERVED UPON THE ATTORNEY OF RECORD FOR EACH
PARTY BY MAIL/HAND ON 8-24-12



2012 AUG 27 A 9:01

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

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

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LENORE R. MAHONEY
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web: www.wellesleyma.gov

ROBERT W. LEVY
WALTER B. ADAMS

ZBA 2012-58 - Amended
Petition of Ronna & Amir Dallal & Arie Zinger
23 Thomas Road

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Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, July 12, 2012, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of RONNA & AMIR DALLAL & ARIE ZINGER requesting a Special Permit/Finding pursuant to the provisions of Section XIVE, Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing shed and replacement with first floor living space with less than required right side yard setbacks, construction of new first floor living space at the front of the house with less than required left side yard and right side yard setbacks, construction of a new front entry, and construction of a second story addition with less than required left side yard, right side yard and rear yard setbacks, on a 4,891 square foot lot in a Water Supply Protection District in which the minimum lot size is 10,000 square feet, at 23 THOMAS ROAD, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On June 26, 2012, 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 Stanley Brooks, Esq., who said that he was representing Ronna and Amir Dallal and Arie Zinger (the "Petitioner").

Mr. Brooks said that the request is for a Special Permit for an addition and renovation of an existing nonconforming house on a nonconforming lot.

Mr. Brooks said that Thomas Road consists of 21 lots, two of which are conforming. He said that those lots are located at the corner of Weston Road.

Mr. Brooks said that the street was originally 5,000 square foot subdivision. He said that some lots were combined later.

Mr. Brooks said that the abutting property to the rear on Bryn Mawr Road has recently has some remodeling done. He said that Bryn Mawr Road is similar to Thomas Road with 21 lots, five of which are conforming.

Mr. Brooks said that there are a total of 42 lots on Thomas and Bryn Mawr Roads, seven of which are conforming. He said that many of the nonconforming lots on those roads have nonconforming structures on them. He said that many of the lots running westerly from 23 Thomas Road are less than 5,000 square feet.

Mr. Brooks said that over the years 16 lots have been issued Special Permits by the Zoning Board of Appeals (ZBA).

Mr. Brooks said that the legal standard in granting a Special Permit is the determination that the intensification shall not be substantially more detrimental to the neighborhood.

Mr. Brooks said that they held an open house for the neighborhood and it was well attended.

Mr. Brooks said that they discovered that there was a miscalculation in the original application of lot coverage due to the landings. He said that including the landings would have put the lot coverage over the amount allowed. He said that, subsequently, revised plans were submitted that pulled back the addition at the front of the house and pulled back the addition at the back of the house where there is an existing shed from the rear and right side yard setbacks.

Mr. Brooks said that the property is located in a Water Supply Protection District but there are no issues with the proposed project.

Mr. Brooks said that the lot was created in 1921 and the original structure was constructed in 1924, before the Wellesley Zoning Bylaw went into effect. He said that there have been subsequent Building Permits issued for interior changes.

Mr. Brooks said that the subject property remains the only single story house on Thomas Road.

Mr. Brooks described the existing encroachments. He said that on the left side, except for the bump out that will be removed, the setback will be just over 7 feet from the lot line at 25 Thomas Road. He said that along the common lot line with 25 Thomas Road is a driveway with a garage set back.

Mr. Brooks said that the second floor addition will respect the 7.1 foot left side yard setback. He said that it was stepped back to 13 feet in the front and 2 feet in the rear at the corner to break up the mass.

Mr. Brooks said that the house to the right at 21 Thomas Road built a second story addition with a 16 foot left side yard setback.

Mr. Brooks said that the existing gazebo will be removed.

Mr. Brooks said that the existing structure is not straight at the rear. He said that the setback varies from 9.3 feet to 9.7 feet from the rear lot line. He said that the proposed addition at the rear was stepped back at the right hand corner and is now more than 10 feet from the rear lot line.

Mr. Brooks said that the existing house has three rooms, a kitchen, a living room and a bedroom. He said that the lot is only 50 feet wide. He said that they were able to come forward with an addition because

there is sufficient front yard setback. He said that the proposal is to also go up because there is no other way to deal with this structure.

Mr. Brooks said that the request is for a Special Permit for the 13 foot by 24 foot two-story addition at the front that will still encroach into the left and right side setbacks. He said that the infill to square off the house at the right rear has been stepped in 2 feet from the rear existing setback. He said that the second story will not exceed 32 feet in height, according to the Architect, Peter Karb. He said that the roof will be adjusted, if necessary, to meet that dimension.

Mr. Brooks said that existing lot coverage is 22.44 percent or 1,098 square feet. He said that proposed lot coverage will be 24.64 percent or 1,205 square feet. He said that the lot coverage is fairly consistent with other houses to the right at 21 Thomas Road at 1,480 square feet, 25 Thomas Road at 1,126 square feet, across the road at 26 Thomas Road at 2,800, and to the rear at 17 Bryn Mawr Road at 1,924 square feet. He said that the house at 26 Thomas Road is a larger home on a larger lot. He said that the lot coverage for 17 Bryn Mawr was based on a recent addition where it was increased from 14 to 22 percent.

Mr. Brooks said that the design has been prepared to be as respectful as possible of the abutters, given the difficulty of the lot and the existing structure on the lot. He said that the second floor will consist of four small bedrooms. He said that this house will be small enough to accommodate a modern Wellesley family.

Mr. Brooks said that the Applicant has worked hard on this project. He said that the Applicant looked at many options including a teardown, which did not seem to fit the property or a snub nose garage at the front, which would be inconsistent with other structures in the neighborhood. He said that the Applicant tried to be sensitive to the impact to the neighbors. He said that the Applicant believes that the proposed additions will make the structure consistent in size with the houses on either side at two stories. He said that it is a modest addition. He said that they could have added an additional 13 feet at the front of the house. He said that it is tastefully designed and is consistent with the character with neighborhood. He said that they do not believe that the project will have any detrimental impact on the neighborhood as a whole.

Mr. Brooks said that the Applicant acknowledges that because of setback issues the project will have some impact on the neighborhood. He said that the object of the bylaw is not directed at individual properties. He said that the object of the bylaw is to preserve the character of the neighborhood as a whole. He said that although the bylaw does not define what is detrimental to a neighborhood, he said that provisions in the bylaw can give some guidance. He said that the Board might be inclined to find that the proposal would be detrimental to the neighborhood if it was out of scale or if it was inconsistent in design, significantly more dense, had significant runoff issues, significant traffic issues, or adverse affects on utility services. He said that none of those conditions exist here.

The Board asked that, in the research of the history of the parcel, was it possible to determine when the shed that is tucked in at the right rear of the property was initially constructed. Mr. Brooks said that he did not find that. He said that it may not have required building permit because it is less than 100 square feet.

Mr. Brooks said that the house is currently empty.

Mr. Brooks said in that the 1921 subdivision for the entire area there may have been a campground that existed. He said that over time some of the lots were combined.

Mr. Brooks said that there is a lot of architectural work that breaks up the visual impact shown on the Right Side Elevation Drawing, A5. He said that on both sides of the house are stockade fences or significantly dense plantings. He said that neither house is greatly visible. He said that the left elevation is stepped back at the front to create a visual break. He said that at the back infill area architectural features were added and the number of windows was limited to lessen the impact.

Mr. Brooks said that there is an Arbor Vitae hedge at the rear that was planted by the homeowners at 17 Bryn Mawr Road. He said that the hedge is fairly dense with 8 to 10 foot tall plantings. He said that the photographs submitted by Mr. Cockfield do not do justice to the density that exists there.

Mr. Brooks said that there is screening on all sides.

Mr. Brooks said that the houses at 21 and 25 Thomas Road are closer to the street. He said that this house will be set back further to lessen the visual impact.

Gavin Cockfield, Esq., said that he submitted a memorandum to the Board and to Mr. Brooks. He said that he wanted to review the key points. He said that the standard for granting a Special Permit is that the Board finds that the structure will not be substantially more detrimental. He said that the bylaw itself establishes what is protected or not protected. He said that the bylaw contains dimensional requirements that set forth a standard. He said that complying with the dimensional requirements implies not being detrimental. He said that the community has determined that if you have a 20 foot side yard setback, you are not being detrimental. He said that, on the other hand, if you are violating that setback, you are creating a detriment to the neighbors and the neighborhood.

Mr. Cockfield discussed nonconformities. He said that Mr. Brooks stated that there are only a small number of lots that meet the area requirements on Thomas and Bryn Mawr Roads. Mr. Cockfield said that many of those lots are not under 5,000 square feet. He said that many of those lots were doubled and are now just under 10,000 square feet. He said that there are many houses that are close to the compliant size. He said that this lot has less than half of the required size.

Mr. Cockfield said that he cited the *Bransford v Zoning Board of Appeals of Edgartown* case in his memorandum. He said that it talks about having a nonconforming structure on a nonconforming lot. He said that even if the structure meets all other Zoning requirements, the structure is nonconforming because it is on a nonconforming lot. He said that with any increase in either the footprint or the living area, you almost cannot reach the conclusion that it is not substantially more detrimental.

Mr. Cockfield said that the Town has decided that there is a particular standard. He said that you cannot build on a lot unless it is 10,000 square feet. He said that when there is a lot that is less than half that size, when the volume of the structure is increased, more detriment to the neighborhood is created.

Mr. Cockfield said that there is a 20 foot side yard setback requirement. He said that this lot has 50 feet of frontage. He said that a conforming house could only be 10 feet wide. He said that this house at the

rear is approximately 26 feet. He said that is a violation of the side yard setback. He said that when you increase encroachments in the side yards you are creating a detriment. He said that the structure as it exists is a detriment.

Mr. Cockfield said that his client abuts the rear of the property. He said that his client is affected by the rear yard setback. He said that adding a second story multiplies the amount of wall space in the violation area by at least twice. He said that doubling the size of the violation is a substantial detriment to the neighborhood. He said that violating the bylaw is detrimental to the neighborhood.

Mr. Cockfield said that in the *Goldhirsch* and *Bransford* cases they all recognized that when you increase the volume of the nonconforming structure, even without changing the footprint, you are increasing the nonconformity of the structure.

Mr. Cockfield said that the structure has less than required rear yard setbacks. He said that the requirement is 10 feet and there is 9.3 feet. He said that the existing house appears to be almost in his clients' living room.

Mr. Cockfield said that going out into the side yard setbacks and then doubling that area with more wall space and area than the bylaw allows creates a detriment.

Mr. Cockfield said that there is a hip roof on the back of the existing house. He said that the hip roof allows more sun into his clients' yard. He said that the proposed gable roof will create a large triangular area of wall. He said that they will be creating more area in the violation area, which is increasing the detriment. He said that by that definition alone, the Board cannot allow this project and allow the addition of the second floor.

Mr. Cockfield said that Mr. Brooks indicated that he did not know when the shed was built. He said that Mr. Brooks believed that it did not require a Building Permit. Mr. Cockfield said that Mr. Brooks does not know whether the shed complies with the bylaw. He said that the burden to establish that the shed complies with the bylaw is on the Applicant. He said that unless that was done, the area of the shed cannot be counted in the footprint.

Mr. Cockfield said that if the bylaw allows a shed of less than 100 square feet, it is saying that the shed is not living area. He said that the proposal is to take the shed out and replace it with a footprint with living area. He said that that will be adding additional side yard violations in the area where the shed used to be that will extend six feet into the side yard, dramatically increasing the setback violation. He said that ordinarily a difference of two, three or four feet might not make a lot of difference. He said that because it is only a 50 foot wide lot and it is 9 feet away from the lot line, the five or six feet start to make a lot of difference.

Mr. Cockfield said that the increase of the mass in all of the side yards is a substantial increase of the detriment compared to the existing nonconforming structure.

Mr. Cockfield read an excerpt from the Preamble of the Zoning Bylaw. He said that the bylaw protects residents by enforcing dimensional requirements.

Mr. Cockfield said that the Applicant should be required to submit a Shadow Study. He said that taking a single story building with a hip roof and raising the roof that close to the property line with a direct southern exposure, the sun will be behind the house and will cast a permanent shadow on the rear of his clients' property. He said that they will not know without a Shadow Study how far the shadow will extend. He said that is an interest that is protected by the Zoning Bylaw. He said that it is the Applicant's burden to establish to the Board that the proposed structure will not be substantially more detrimental to the neighborhood.

Mr. Cockfield said that there is one window at the back of the existing house. He said that the modified version of the site plans converts that to a larger window and doubles it. He said that it puts a bedroom on the second floor with a window and puts a rear entrance on the property. He said that because of the proximity with the 9 foot rear setback, the occupants will be looking into his clients' family room and into their master bedroom. He said that does not occur now. He said that although there may be a structure there, his clients currently do have privacy. He said that building a bedroom 9 feet from the property line will create a very real privacy issue.

Mr. Cockfield said that there will be an impact on the value of the property. He said that he was going to try to get a letter from a Real Estate Broker to address the likely impact on his clients. He read from a letter (retained by proponent) that stated that building a house so close to the rear property line is very likely to negatively impact the value of his clients' property. He said that the bylaw, in the Preamble, specifically recognizes that the bylaw is adopted to preserve property values. He said that is done by complying with the bylaw. He said that increasing the violations in the side yard setbacks, increasing the amount of mass that is in the backyard, changing the roofline and intruding on an area that is protected by the bylaw, substantially increases the detrimental impact.

Mr. Cockfield said that the photographs have not been altered and are reflective of the existing condition. He invited the Board to visit the property to view the Arbor Vitae hedge. He said that there will be a substantial increase in the intrusion of his clients' privacy and blockage of light and air onto their property.

Mr. Cockfield said that this proposal is asking to convert a shed into living area. He said that there is nothing under the bylaw that allows that. He said that the proposal is to go up and out further into the side yard. He said that no case has ever said that you can do that. He said that in doing so, there will be such a dramatic impact due to the smallness of the lot and the proximity of the other properties, he suggests that the Board has to conclude that there will be a substantial increase in the detriment with the proposed increase as opposed to the existing structure.

The Board questioned that if it accepted all of Mr. Cockfield's arguments, how could the Board ever change a nonconforming house on a nonconforming lot.

Mr. Cockfield said that when you are in the unfortunate circumstance of having a nonconforming house on a nonconforming lot, you can really only make some nominal changes. He said that he mentioned the *Gale v Board of Appeals of Gloucester* case in his brief. He said that he thought that it was inconsistent with *Bransford*. He said that *Gale* said that the Board could make a Section 6 Finding to allow a new house or increase.

Mr. Cockfield said that he listed in his memorandum all of the permits for expansion that were issued for structures on Thomas Road. He said that when the Board looks at a Special Permit for a lot that is undersized, it looks to see if the setbacks for the existing structure are conforming. He said that three-quarters of the permits that were listed in the memorandum make the analysis of encroachment into the setbacks. He said that it is an important concept because although you might be able to increase it, in this situation, they cannot really do it. He said that the lot is so small, there is really nowhere for them to go. He said that many other times, in the case of the permits cited in the memo, expansions have been allowed without exacerbating the nonconformities.

Mr. Cockfield said that in this case, the proposal is to increase both side yard violations and put more volume in the setbacks. He said that for his clients in particular, the wall would be more than doubled just over 9 feet from the property line. He said that is substantially more detrimental.

The Board said that Mr. Cockfield's memorandum clearly addressed the impacts to the property at the rear. The Board asked how the Board would apply that to the neighborhood. The Board said that it did not think that the bylaw talks about being substantially more detrimental to an individual but rather substantially more detrimental to the neighborhood, if the Board was to approve.

Mr. Cockfield said that his client is in the neighborhood. He said that with every other application that was heard tonight, the Board always looked at the impacts on the abutters. He said that the abutters are the most immediate and proximately affected. He said that if you had a standard that said that impacts on the abutters were not a concern but rather impacts on the neighborhood were, how would the Board ever reach the conclusion that the proposed increase is substantially more detrimental. He said that, in that case, the Board would allow virtually any increase.

Mr. Cockfield said that the abutters are part of the neighborhood. He said that if any one of them is significantly impacted, there is a significant increase in the detriment to the neighborhood.

Mr. Brooks discussed the definition of neighborhood. He said that Thomas Road and Bryn Mawr Road are similarly situated. He said that if the proposal was to build up to 36 feet in height and build right to the 30 foot front yard setback, that would be more detrimental. He said that when he looked at the snub nose garage design, he thought that it was not in keeping with the neighborhood.

Mr. Brooks said that the Zoning Bylaw, by establishing 10, 20, 30, 40 Zoning districts, established broader neighborhoods. He said that those areas are broken down into sub-units and streets. He said that he did not think that there is any case law that suggests that individual impact is the same as impact on the neighborhood. He said that the required standard is that the Board make a finding based on detriment to the neighborhood.

Mr. Brooks said that if the Board is concerned about the abutters to the rear, it should know that between 2010 and 2012, the abutters did a similar addition at the rear of their house. He said that they took their property from what was originally set back 22 feet and it brought five or six feet closer to the lot line and filled the area in.

Mr. Brooks said that with this petition there is clearly a question of intensification. He said that the Board has to determine whether or not this proposal is going to be substantially more detrimental to the

neighborhood. He asked how the Board makes the leap from shadows to one house to how that adversely affects the neighborhood.

Mark Finno, 26 Thomas Road, said that this is a good thing for Thomas Road. He said that nine families signed a petition to endorse the project. He said that they want to make sure that it happens. He said that he was representing the families who signed the petition. He said that it is currently the only one-story house on the street. He said that it is currently detrimental. He said that he lives directly across the street. He said what he looks at is an eyesore. He said that there should be a second floor so a family can move in. He said that they had a meeting with the residents on Thomas Road. He said that only one household did not attend. He said that all the residents who did attend the meeting did support the project. He submitted a petition signed by 12 residents of Thomas Road.

Mr. Finno asked that the Board respect the wishes of the neighborhood and not the wishes of an individual.

Kimberly McCann, 18 Thomas Road, said that she agreed with Mr. Finno that not granting approval for this project would be more detrimental to the neighborhood. She said that it is a one-story house that has been sitting there for numerous years. She said that she has lived on Thomas Road for 15 years. She said that when they moved in it was a rental unit in bad disrepair. She said that the first people who moved in and purchased it, renovated it and had plans drawn up for a second floor. She said that subsequent plans by new buyers called for a second floor. She said that the reason for a second floor is so that it can be a family home. She said that the neighbors want to have a family move in. She said that the Applicant made changes to the plans after meeting with neighbors. She said that she applauds the changes made after meeting with the owners.

Daniel Sciortino, 32 Thomas Road, said that the detriment is the existing structure. He said that it is an eyesore. He said that inside the house it is basically a one-bedroom apartment. He said that it has two and one-half rooms, a galley kitchen and bath. He said that it is not good for a family. He said that the ideal is to have a family move in. He said that would be good for the neighborhood.

Statement of Facts

The subject property is located at 23 Thomas Road, on a 4,891 square foot lot in a Water Supply Protection District in which the minimum lot size is 10,000 square feet, with a minimum left side yard setback of 7.1 feet, a minimum rear yard setback of 9.3 feet, and a minimum right side yard setback of 16.1 feet.

The Petitioner is requesting a Special Permit/Finding pursuant to the provisions of Section XIVE, Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing shed and replacement with first floor living space with less than required right side yard setbacks, construction of new first floor living space at the front of the house with less than required left side yard and right side yard setbacks, construction of a new front entry, and construction of a second story addition with less than required left side yard, right side yard and rear yard setbacks, on a 4,891 square foot lot in a Water Supply Protection District in which the minimum lot size is 10,000 square feet, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

ZBA 2012-58 - Amended
Petition of Ronna & Amir Dallal & Arie Zinger
23 Thomas Road

A Plot Plan, dated 6/15/12, revised 7/8/12, stamped by Frank Iebba, Existing and Proposed Floor Plans and Elevation Drawings, dated 6/14/12, revised 7/6/12, prepared by Peter J. Karb, Architect, and photographs were submitted.

On July 6, 2012, the Planning Department Staff reviewed the petition and recommended that the Special Permit be granted.

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 demolition of an existing shed and replacement with first floor living space with less than required right side yard setbacks, construction of new first floor living space at the front of the house with less than required left side yard and right side yard setbacks, construction of a new front entry, and construction of a second story addition with less than required left side yard, right side yard and rear yard setbacks, on a 4,891 square foot lot in a Water Supply Protection District in which the minimum lot size is 10,000 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 demolition of an existing shed and replacement with first floor living space with less than required right side yard setbacks, construction of new first floor living space at the front of the house with less than required left side yard and right side yard setbacks, construction of a new front entry, and construction of a second story addition with less than required left side yard, right side yard and rear yard setbacks, in accordance with the submitted plot plan and construction drawings and subject to the condition:

- The existing gazebo shall be removed.

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.

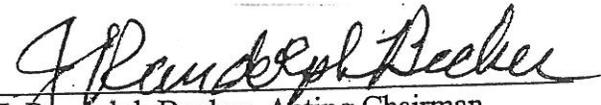
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WILLESLY HA 02402
2012 AUG -6 1 P 2:021

ZBA 2012-58 - Amended
Petition of Ronna & Amir Dallal & Arie Zinger
23 Thomas Road

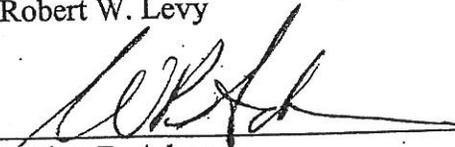
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2012 AUG 27 A 9:01

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.

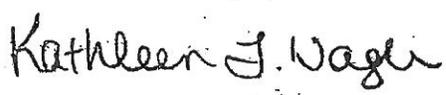

J. Randolph Becker, Acting Chairman


Robert W. Levy


Walter B. Adams

Attest Copy

ATTEST


Kathleen J. Wagoner

cc: Planning Board
Inspector of Buildings
lrm

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

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ZBA 2012-58 - Amended
Petition of Ronna & Amir Dallal & Arie Zinger
23 Thomas Road

Record Owner of Property: Dean M. Palli

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, July 12, 2012, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of RONNA & AMIR DALLAL & ARIE ZINGER requesting a Special Permit/Finding pursuant to the provisions of Section XIVE, Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing shed and replacement with first floor living space with less than required right side yard setbacks, construction of new first floor living space at the front of the house with less than required left side yard and right side yard setbacks, construction of a new front entry, and construction of a second story addition with less than required left side yard, right side yard and rear yard setbacks, on a 4,891 square foot lot in a Water Supply Protection District in which the minimum lot size is 10,000 square feet, at 23 THOMAS ROAD, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On June 26, 2012, 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 Stanley Brooks, Esq., who said that he was representing Ronna and Amir Dallal and Arie Zinger (the "Petitioner").

Mr. Brooks said that the request is for a Special Permit for an addition and renovation of an existing nonconforming house on a nonconforming lot.

Mr. Brooks said that Thomas Road consists of 21 lots, two of which are conforming. He said that those lots are located at the corner of Weston Road.

Mr. Brooks said that the street was originally 5,000 square foot subdivision. He said that some lots were combined later.

Mr. Brooks said that the abutting property to the rear on Bryn Mawr Road has recently has some remodeling done. He said that Bryn Mawr Road is similar to Thomas Road with 21 lots, five of which are conforming.

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Mr. Brooks said that there are a total of 42 lots on Thomas and Bryn Mawr Roads, seven of which are conforming. He said that many of the nonconforming lots on those roads have nonconforming structures on them. He said that many of the lots running westerly from 23 Thomas Road are less than 5,000 square feet.

Mr. Brooks said that over the years 16 lots have been issued Special Permits by the Zoning Board of Appeals (ZBA).

Mr. Brooks said that the legal standard in granting a Special Permit is the determination that the intensification shall not be substantially more detrimental to the neighborhood.

Mr. Brooks said that they held an open house for the neighborhood and it was well attended.

Mr. Brooks said that they discovered that there was a miscalculation in the original application of lot coverage due to the landings. He said that including the landings would have put the lot coverage over the amount allowed. He said that, subsequently, revised plans were submitted that pulled back the addition at the front of the house and pulled back the addition at the back of the house where there is an existing shed from the rear and right side yard setbacks.

Mr. Brooks said that the property is located in a Water Supply Protection District but there are no issues with the proposed project.

Mr. Brooks said that the lot was created in 1921 and the original structure was constructed in 1924, before the Wellesley Zoning Bylaw went into effect. He said that there have been subsequent Building Permits issued for interior changes.

Mr. Brooks said that the subject property remains the only single story house on Thomas Road.

Mr. Brooks described the existing encroachments. He said that on the left side, except for the bump out that will be removed, the setback will be just over 7 feet from the lot line at 25 Thomas Road. He said that along the common lot line with 25 Thomas Road is a driveway with a garage set back.

Mr. Brooks said that the second floor addition will respect the 7.1 foot left side yard setback. He said that it was stepped back to 13 feet in the front and 2 feet in the rear at the corner to break up the mass.

Mr. Brooks said that the house to the right at 21 Thomas Road built a second story addition with a 16 foot left side yard setback.

Mr. Brooks said that the existing gazebo will be removed.

Mr. Brooks said that the existing structure is not straight at the rear. He said that the setback varies from 9.3 feet to 9.7 feet from the rear lot line. He said that the proposed addition at the rear was stepped back at the right hand corner and is now more than 10 feet from the rear lot line.

Mr. Brooks said that the existing house has three rooms, a kitchen, a living room and a bedroom. He said that the lot is only 50 feet wide. He said that they were able to come forward with an addition because

there is sufficient front yard setback. He said that the proposal is to also go up because there is no other way to deal with this structure.

Mr. Brooks said that the request is for a Special Permit for the 13 foot by 24 foot two-story addition at the front that will still encroach into the left and right side setbacks. He said that the infill to square off the house at the right rear has been stepped in 2 feet from the rear existing setback. He said that the second story will not exceed 32 feet in height, according to the Architect, Peter Karb. He said that the roof will be adjusted, if necessary, to meet that dimension.

Mr. Brooks said that existing lot coverage is 22.44 percent or 1,098 square feet. He said that proposed lot coverage will be 24.64 percent or 1,205 square feet. He said that the lot coverage is fairly consistent with other houses to the right at 21 Thomas Road at 1,480 square feet, 25 Thomas Road at 1,126 square feet, across the road at 26 Thomas Road at 2,800, and to the rear at 17 Bryn Mawr Road at 1,924 square feet. He said that the house at 26 Thomas Road is a larger home on a larger lot. He said that the lot coverage for 17 Bryn Mawr was based on a recent addition where it was increased from 14 to 22 percent.

Mr. Brooks said that the design has been prepared to be as respectful as possible of the abutters, given the difficulty of the lot and the existing structure on the lot. He said that the second floor will consist of four small bedrooms. He said that this house will be small enough to accommodate a modern Wellesley family.

Mr. Brooks said that the Applicant has worked hard on this project. He said that the Applicant looked at many options including a teardown, which did not seem to fit the property or a snub nose garage at the front, which would be inconsistent with other structures in the neighborhood. He said that the Applicant tried to be sensitive to the impact to the neighbors. He said that the Applicant believes that the proposed additions will make the structure consistent in size with the houses on either side at two stories. He said that it is a modest addition. He said that they could have added an additional 13 feet at the front of the house. He said that it is tastefully designed and is consistent with the character with neighborhood. He said that they do not believe that the project will have any detrimental impact on the neighborhood as a whole.

Mr. Brooks said that the Applicant acknowledges that because of setback issues the project will have some impact on the neighborhood. He said that the object of the bylaw is not directed at individual properties. He said that the object of the bylaw is to preserve the character of the neighborhood as a whole. He said that although the bylaw does not define what is detrimental to a neighborhood, he said that provisions in the bylaw can give some guidance. He said that the Board might be inclined to find that the proposal would be detrimental to the neighborhood if it was out of scale or if it was inconsistent in design, significantly more dense, had significant runoff issues, significant traffic issues, or adverse affects on utility services. He said that none of those conditions exist here.

The Board asked that, in the research of the history of the parcel, was it possible to determine when the shed that is tucked in at the right rear of the property was initially constructed. Mr. Brooks said that he did not find that. He said that it may not have required building permit because it is less than 100 square feet.

Mr. Brooks said that the house is currently empty.

Mr. Brooks said in that the 1921 subdivision for the entire area there may have been a campground that existed. He said that over time some of the lots were combined.

Mr. Brooks said that there is a lot of architectural work that breaks up the visual impact shown on the Right Side Elevation Drawing, A5. He said that on both sides of the house are stockade fences or significantly dense plantings. He said that neither house is greatly visible. He said that the left elevation is stepped back at the front to create a visual break. He said that at the back infill area architectural features were added and the number of windows was limited to lessen the impact.

Mr. Brooks said that there is an Arbor Vitae hedge at the rear that was planted by the homeowners at 17 Bryn Mawr Road. He said that the hedge is fairly dense with 8 to 10 foot tall plantings. He said that the photographs submitted by Mr. Cockfield do not do justice to the density that exists there.

Mr. Brooks said that there is screening on all sides.

Mr. Brooks said that the houses at 21 and 25 Thomas Road are closer to the street. He said that this house will be set back further to lessen the visual impact.

Gavin Cockfield, Esq., said that he submitted a memorandum to the Board and to Mr. Brooks. He said that he wanted to review the key points. He said that the standard for granting a Special Permit is that the Board finds that the structure will not be substantially more detrimental. He said that the bylaw itself establishes what is protected or not protected. He said that the bylaw contains dimensional requirements that set forth a standard. He said that complying with the dimensional requirements implies not being detrimental. He said that the community has determined that if you have a 20 foot side yard setback, you are not being detrimental. He said that, on the other hand, if you are violating that setback, you are creating a detriment to the neighbors and the neighborhood.

Mr. Cockfield discussed nonconformities. He said that Mr. Brooks stated that there are only a small number of lots that meet the area requirements on Thomas and Bryn Mawr Roads. Mr. Cockfield said that many of those lots are not under 5,000 square feet. He said that many of those lots were doubled and are now just under 10,000 square feet. He said that there are many houses that are close to the compliant size. He said that this lot has less than half of the required size.

Mr. Cockfield said that he cited the *Bransford v Zoning Board of Appeals of Edgartown* case in his memorandum. He said that it talks about having a nonconforming structure on a nonconforming lot. He said that even if the structure meets all other Zoning requirements, the structure is nonconforming because it is on a nonconforming lot. He said that with any increase in either the footprint or the living area, you almost cannot reach the conclusion that it is not substantially more detrimental.

Mr. Cockfield said that the Town has decided that there is a particular standard. He said that you cannot build on a lot unless it is 10,000 square feet. He said that when there is a lot that is less than half that size, when the volume of the structure is increased, more detriment to the neighborhood is created.

Mr. Cockfield said that there is a 20 foot side yard setback requirement. He said that this lot has 50 feet of frontage. He said that a conforming house could only be 10 feet wide. He said that this house at the

rear is approximately 26 feet. He said that is a violation of the side yard setback. He said that when you increase encroachments in the side yards you are creating a detriment. He said that the structure as it exists is a detriment.

Mr. Cockfield said that his client abuts the rear of the property. He said that his client is affected by the rear yard setback. He said that adding a second story multiplies the amount of wall space in the violation area by at least twice. He said that doubling the size of the violation is a substantial detriment to the neighborhood. He said that violating the bylaw is detrimental to the neighborhood.

Mr. Cockfield said that in the *Goldhirsch* and *Bransford* cases they all recognized that when you increase the volume of the nonconforming structure, even without changing the footprint, you are increasing the nonconformity of the structure.

Mr. Cockfield said that the structure has less than required rear yard setbacks. He said that the requirement is 10 feet and there is 9.3 feet. He said that the existing house appears to be almost in his clients' living room.

Mr. Cockfield said that going out into the side yard setbacks and then doubling that area with more wall space and area than the bylaw allows creates a detriment.

Mr. Cockfield said that there is a hip roof on the back of the existing house. He said that the hip roof allows more sun into his clients' yard. He said that the proposed gable roof will create a large triangular area of wall. He said that they will be creating more area in the violation area, which is increasing the detriment. He said that by that definition alone, the Board cannot allow this project and allow the addition of the second floor.

Mr. Cockfield said that Mr. Brooks indicated that he did not know when the shed was built. He said that Mr. Brooks believed that it did not require a Building Permit. Mr. Cockfield said that Mr. Brooks does not know whether the shed complies with the bylaw. He said that the burden to establish that the shed complies with the bylaw is on the Applicant. He said that unless that was done, the area of the shed cannot be counted in the footprint.

Mr. Cockfield said that if the bylaw allows a shed of less than 100 square feet, it is saying that the shed is not living area. He said that the proposal is to take the shed out and replace it with a footprint with living area. He said that that will be adding additional side yard violations in the area where the shed used to be that will extend six feet into the side yard, dramatically increasing the setback violation. He said that ordinarily a difference of two, three or four feet might not make a lot of difference. He said that because it is only a 50 foot wide lot and it is 9 feet away from the lot line, the five or six feet start to make a lot of difference.

Mr. Cockfield said that the increase of the mass in all of the side yards is a substantial increase of the detriment compared to the existing nonconforming structure.

Mr. Cockfield read an excerpt from the Preamble of the Zoning Bylaw. He said that the bylaw protects residents by enforcing dimensional requirements.

Mr. Cockfield said that the Applicant should be required to submit a Shadow Study. He said that taking a single story building with a hip roof and raising the roof that close to the property line with a direct southern exposure, the sun will be behind the house and will cast a permanent shadow on the rear of his clients' property. He said that they will not know without a Shadow Study how far the shadow will extend. He said that is an interest that is protected by the Zoning Bylaw. He said that it is the Applicant's burden to establish to the Board that the proposed structure will not be substantially more detrimental to the neighborhood.

Mr. Cockfield said that there is one window at the back of the existing house. He said that the modified version of the site plans converts that to a larger window and doubles it. He said that it puts a bedroom on the second floor with a window and puts a rear entrance on the property. He said that because of the proximity with the 9 foot rear setback, the occupants will be looking into his clients' family room and into their master bedroom. He said that does not occur now. He said that although there may be a structure there, his clients currently do have privacy. He said that building a bedroom 9 feet from the property line will create a very real privacy issue.

Mr. Cockfield said that there will be an impact on the value of the property. He said that he was going to try to get a letter from a Real Estate Broker to address the likely impact on his clients. He read from a letter (retained by proponent) that stated that building a house so close to the rear property line is very likely to negatively impact the value of his clients' property. He said that the bylaw, in the Preamble, specifically recognizes that the bylaw is adopted to preserve property values. He said that is done by complying with the bylaw. He said that increasing the violations in the side yard setbacks, increasing the amount of mass that is in the backyard, changing the roofline and intruding on an area that is protected by the bylaw, substantially increases the detrimental impact.

Mr. Cockfield said that the photographs have not been altered and are reflective of the existing condition. He invited the Board to visit the property to view the Arbor Vitae hedge. He said that there will be a substantial increase in the intrusion of his clients' privacy and blockage of light and air onto their property.

Mr. Cockfield said that this proposal is asking to convert a shed into living area. He said that there is nothing under the bylaw that allows that. He said that the proposal is to go up and out further into the side yard. He said that no case has ever said that you can do that. He said that in doing so, there will be such a dramatic impact due to the smallness of the lot and the proximity of the other properties, he suggests that the Board has to conclude that there will be a substantial increase in the detriment with the proposed increase as opposed to the existing structure.

The Board questioned that if it accepted all of Mr. Cockfield's arguments, how could the Board ever change a nonconforming house on a nonconforming lot.

Mr. Cockfield said that when you are in the unfortunate circumstance of having a nonconforming house on a nonconforming lot, you can really only make some nominal changes. He said that he mentioned the *Gale v Board of Appeals of Gloucester* case in his brief. He said that he thought that it was inconsistent with *Bransford*. He said that *Gale* said that the Board could make a Section 6 Finding to allow a new house or increase.

Mr. Cockfield said that he listed in his memorandum all of the permits for expansion that were issued for structures on Thomas Road. He said that when the Board looks at a Special Permit for a lot that is undersized, it looks to see if the setbacks for the existing structure are conforming. He said that three-quarters of the permits that were listed in the memorandum make the analysis of encroachment into the setbacks. He said that it is an important concept because although you might be able to increase it, in this situation, they cannot really do it. He said that the lot is so small, there is really nowhere for them to go. He said that many other times, in the case of the permits cited in the memo, expansions have been allowed without exacerbating the nonconformities.

Mr. Cockfield said that in this case, the proposal is to increase both side yard violations and put more volume in the setbacks. He said that for his clients in particular, the wall would be more than doubled just over 9 feet from the property line. He said that is substantially more detrimental.

The Board said that Mr. Cockfield's memorandum clearly addressed the impacts to the property at the rear. The Board asked how the Board would apply that to the neighborhood. The Board said that it did not think that the bylaw talks about being substantially more detrimental to an individual but rather substantially more detrimental to the neighborhood, if the Board was to approve.

Mr. Cockfield said that his client is in the neighborhood. He said that with every other application that was heard tonight, the Board always looked at the impacts on the abutters. He said that the abutters are the most immediate and proximately affected. He said that if you had a standard that said that impacts on the abutters were not a concern but rather impacts on the neighborhood were, how would the Board ever reach the conclusion that the proposed increase is substantially more detrimental. He said that, in that case, the Board would allow virtually any increase.

Mr. Cockfield said that the abutters are part of the neighborhood. He said that if any one of them is significantly impacted, there is a significant increase in the detriment to the neighborhood.

Mr. Brooks discussed the definition of neighborhood. He said that Thomas Road and Bryn Mawr Road are similarly situated. He said that if the proposal was to build up to 36 feet in height and build right to the 30 foot front yard setback, that would be more detrimental. He said that when he looked at the snub nose garage design, he thought that it was not in keeping with the neighborhood.

Mr. Brooks said that the Zoning Bylaw, by establishing 10, 20, 30, 40 Zoning districts, established broader neighborhoods. He said that those areas are broken down into sub-units and streets. He said that he did not think that there is any case law that suggests that individual impact is the same as impact on the neighborhood. He said that the required standard is that the Board make a finding based on detriment to the neighborhood.

Mr. Brooks said that if the Board is concerned about the abutters to the rear, it should know that between 2010 and 2012, the abutters did a similar addition at the rear of their house. He said that they took their property from what was originally set back 22 feet and it brought five or six feet closer to the lot line and filled the area in.

Mr. Brooks said that with this petition there is clearly a question of intensification. He said that the Board has to determine whether or not this proposal is going to be substantially more detrimental to the

neighborhood. He asked how the Board makes the leap from shadows to one house to how that adversely affects the neighborhood.

Mark Finno, 26 Thomas Road, said that this is a good thing for Thomas Road. He said that nine families signed a petition to endorse the project. He said that they want to make sure that it happens. He said that he was representing the families who signed the petition. He said that it is currently the only one-story house on the street. He said that it is currently detrimental. He said that he lives directly across the street. He said what he looks at is an eyesore. He said that there should be a second floor so a family can move in. He said that they had a meeting with the residents on Thomas Road. He said that only one household did not attend. He said that all the residents who did attend the meeting did support the project. He submitted a petition signed by 12 residents of Thomas Road.

Mr. Finno asked that the Board respect the wishes of the neighborhood and not the wishes of an individual.

Kimberly McCann, 18 Thomas Road, said that she agreed with Mr. Finno that not granting approval for this project would be more detrimental to the neighborhood. She said that it is a one-story house that has been sitting there for numerous years. She said that she has lived on Thomas Road for 15 years. She said that when they moved in it was a rental unit in bad disrepair. She said that the first people who moved in and purchased it, renovated it and had plans drawn up for a second floor. She said that subsequent plans by new buyers called for a second floor. She said that the reason for a second floor is so that it can be a family home. She said that the neighbors want to have a family move in. She said that the Applicant made changes to the plans after meeting with neighbors. She said that she applauds the changes made after meeting with the owners.

Daniel Sciortino, 32 Thomas Road, said that the detriment is the existing structure. He said that it is an eyesore. He said that inside the house it is basically a one-bedroom apartment. He said that it has two and one-half rooms, a galley kitchen and bath. He said that it is not good for a family. He said that the ideal is to have a family move in. He said that would be good for the neighborhood.

Statement of Facts

The subject property is located at 23 Thomas Road, on a 4,891 square foot lot in a Water Supply Protection District in which the minimum lot size is 10,000 square feet, with a minimum left side yard setback of 7.1 feet, a minimum rear yard setback of 9.3 feet, and a minimum right side yard setback of 16.1 feet.

The Petitioner is requesting a Special Permit/Finding pursuant to the provisions of Section XIVE, Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing shed and replacement with first floor living space with less than required right side yard setbacks, construction of new first floor living space at the front of the house with less than required left side yard and right side yard setbacks, construction of a new front entry, and construction of a second story addition with less than required left side yard, right side yard and rear yard setbacks, on a 4,891 square foot lot in a Water Supply Protection District in which the minimum lot size is 10,000 square feet, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

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A Plot Plan, dated 6/15/12, revised 7/8/12, stamped by Frank Iebba, Existing and Proposed Floor Plans and Elevation Drawings, dated 6/14/12, revised 7/6/12, prepared by Peter J. Karb, Architect, and photographs were submitted.

On July 6, 2012, the Planning Department Staff reviewed the petition and recommended that the Special Permit be granted.

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 demolition of an existing shed and replacement with first floor living space with less than required right side yard setbacks, construction of new first floor living space at the front of the house with less than required left side yard and right side yard setbacks, construction of a new front entry, and construction of a second story addition with less than required left side yard, right side yard and rear yard setbacks, on a 4,891 square foot lot in a Water Supply Protection District in which the minimum lot size is 10,000 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 demolition of an existing shed and replacement with first floor living space with less than required right side yard setbacks, construction of new first floor living space at the front of the house with less than required left side yard and right side yard setbacks, construction of a new front entry, and construction of a second story addition with less than required left side yard, right side yard and rear yard 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.

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PLANNING DEPARTMENT

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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

Robert W. Levy

Walter B. Adams

cc: Planning Board
Inspector of Buildings
lrm