



ZONING BOARD OF APPEALS

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

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ZBA 2012-75
 Petition of Joseph Fleming
 25 Willow Street

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Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, October 4, 2012, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of JOSEPH FLEMING requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing nonconforming structure and garage and construction of a new one-story structure with attic and attached garage that will meet all setback requirements, on a 10,488 square foot lot in a district in which the minimum lot size is 15,000 square feet, at 25 WILLOW STREET, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On September 18, 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 were Laurence Shind, Esq. and Ron Ham, Builder, representing Joseph Fleming, (the "Petitioner").

Mr. Shind said that they are seeking a Special Permit/Finding that the proposed demolition of an existing nonconforming residence on this lot and construction of a new residence that will comply with all setback and dimensional requirements shall not be substantially more detrimental than the existing nonconforming structure.

Mr. Shind said that the lot is nonconforming. He said that it is 10,488 square feet in a district in which the minimum lot size is 15,000 square feet. He said that there is an existing one-story bungalow style house on the lot that was built in 1941. He said that there is approximately 700 square feet of living area. He said that there is also a one-car detached garage. He said that existing lot coverage is approximately 10.5 percent. He said that the right side of the existing house is nonconforming and the right side of the existing garage is also nonconforming.

Mr. Shind said that the proposed house will comply with all setback and dimensional requirements. He said that the proposed living area for the first floor and attic will be 2,469 square feet, which is less than the 4,300 square foot threshold for Large House Review for the district. He said that lot coverage will be 19 percent.

The Board said that it was concerned about the straight façade on the 29 Willow Street side. The Board said that a 62 foot long building is too long. The Board said that the garage door will be 32.1 feet to the side property line at 21 Willow Street. The Board strongly suggested that the garage be offset to increase the dimension from 29 Willow Street to break up the façade.

The Board said that a couple of windows could be added on the back of the garage to improve the scale.

Mr. Ham said that they do not want to cut down the turn on the driveway. The Board said that there will still be 30 feet, according to the plan. The Board said that sliding the garage to the right by two feet would still meet the Zoning requirements.

Mr. Ham asked if the concern of the Board is the look of the long façade. He asked about breaking the façade up with a corner board. The Board members thought that would not be a suitable solution. Mr. Ham asked if moving the garage 1 foot to the right would be acceptable. The Board said that moving it 1.5 feet to the right would be better. The Board said that the shadow line will more dramatically show the offset.

Mr. Ham said that they can add a window to the back side of the garage as well.

The Board said that revised plot and construction plans should be submitted showing the changes.

The Board said that there is a full stairway up to a second level that is described as attic on the plans. The Board said that a 24 foot distance is shown at a 5 foot height. Mr. Ham said that there are 5 foot knee walls. The Board said that does not correspond to the plans. The Board said that it is not to scale.

The Board asked if the intent is to come back before the Board at some time with the intent of adding a second level, since the stairway is shown on the plans. Mr. Ham said that they may possibly come back before the Board for living area which is shown on the plans as attic space.

Neal Siskind, 28 Burke Lane, said that he filed a written opposition that was emailed to the Board. He said that there seems to be a significant issue with the accuracy of the land surveying of Foresite Engineering. He said that the Board should seriously consider whether or not this plan is accurate, based on the negligence on their part on the plan that was discussed earlier in the hearing. He requested that the Board consider having another land survey done on this property. He said that it is a very small lot. He said that the proposed structure will be almost twice the size of the existing one.

Mr. Siskind offered to show pictures of the property on his iPad. The Board said that the Board members had viewed the property and had received the photographs attached to Mr. Siskind's email.

Mr. Siskind said that he had a major concern with the construction of the new house and having the garage turned at the back with an extended driveway. He said that the proposed driveway, as shown on the plans, brings parked vehicles into the rear yard of the property. The Board said that there is a garage there now. Mr. Siskind said that the existing garage is not as far back as the proposed driveway seems to be. The Board said that the existing garage is 26.4 feet from the rear lot line and the proposed garage will be 41.5 feet from the rear lot line.

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Mr. Siskind said that the driveway will go back further than the existing garage. The Board said that portion of the driveway will be for maneuvering space, to allow for backing into and out of the garage. Mr. Siskind said that the existing condition has a driveway that leads into a garage. He said that you do not see any vehicles. He said that this proposal allows for a car to be parked in the garage and also allows for a second vehicle to be parked in the extended parking area. The Board said that there could be two or three vehicles parked there. Mr. Siskind said that the view from his yard and neighboring properties will be of parked vehicles instead of a nice rear yard space.

A Board Member said that he viewed this property from both sides of 28 Burke Lane and he viewed 28 Burke Lane from 25 Willow Street. He said that there are many plantings there now. He said that the Petitioner is entitled to use of his property. Mr. Siskind said that he had no problem with the use of the property. He said that he was concerned about allowing the driveway to be extended further back. The Board said that the Petitioner could extend the driveway all the way back to the lot line.

Mr. Siskind displayed on his iPad the view of 25 Willow Street from his back yard.

The Board said that the pine trees between the properties appeared to have been lollipopped. The Board said that plantings could be added to fill in the screening.

Mr. Siskind said that the Petitioner was requesting a Variance. The Board said that the request is for a Special Permit/Finding because the lot is undersized. The Board said that the proposed structure will comply with Zoning requirements. The Board said that the Petitioner has followed procedure in coming before the Board before demolishing the house. The Board said that this Board has always granted a petition of this nature.

Mr. Siskind said that this is a special circumstance where the Applicant should at least be required to install some sort of natural screening, whether it be plantings or a fence to block the view. The Board said that is not a Zoning issue.

Mr. Siskind asked if there is any sort of measurement of the extension of the driveway into the rear yard. The Board said that does not concern the Board because it is not a Zoning issue. The Board said that the Petitioner could bring the driveway right up to the property line if he so chooses. The Board said that it is not a structure.

Mr. Siskind asked if the standard concerns a negative impact on the neighborhood. The Board said that it has to make a determination that the proposed project will not be substantially more detrimental to the neighborhood. The Board said that the existing structure is small. The Board said that this will be an improvement and not more detrimental to the neighborhood.

The Board said that it is very concerned about the surveying. The Board said that the issue discussed earlier in the Public Hearing was brought to the Board because the neighbors hired surveyors to protect their interests. The Board said that if Mr. Siskind is concerned about whether there are some surveying problems here, he should retain a surveyor. The Board said that if a problem is found, it should be brought to the attention of the Building Inspector.

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Mr. Siskind said that he would like the record to reflect that he is strongly opposed to the petition. He said that he thought that the decision should be held off until he has an opportunity to have a surveyor verify the property lines so that there is an accurate determination here.

The Board said that if it grants the Special Permit, the Petitioner may proceed at his own risk. The Board said that if, at some point in the future, there is a determination that there is a violation, Mr. Siskind will have legal basis for taking a civil action with the Petitioner.

Victor Coelho, 24 Burke Lane, said that his concerns were similar to those of Mr. Siskind. He said that his view is of the house at 25 Willow Street as well. He said that his concern was an aesthetic issue. He said that it appears that three trees will be taken down. He said that the sight lines to the garage, cars and fumes coming out is unacceptable.

The Board asked if Mr. Coelho thought that the Petitioner should not be allowed to build a house and garage at 24 Willow Street. Mr. Coelho said that he found it surprising that there was no concern about the aesthetics. He said that when he came before the Board to expand his house, there was a lot of talk about aesthetics. The Board confirmed that it granted Mr. Coelho's request. The Board said that it makes its decisions based on Zoning.

The Board said that Willow Street is a recently discovered street by developers. The Board said that many of the houses will be torn down. The Board said that the houses will be built as large as they can be within the bylaw. The Board said that is what is happening all over town.

The Board said that this will be a modest sized house. The Board said that it is much smaller than Mr. Siskind's and Mr. Coelho's houses, as well as being downhill from them.

Mr. Coelho asked if there is any special consideration given when there is a driveway and cars. The Board said that there is not. The Board said that if it can see from the plans that headlights will aim at a neighbor's property, the Board strongly suggests that plantings be accommodated there to reduce the effect of that. The Board said that contractors and builders generally agree to do that.

The Board that trees will be cut down at 25 Willow Street. The Board said that the Building Inspector will look at those trees in relation to the Tree Preservation Bylaw.

The Board said that it is in both property owners' interest to have good landscaping between the properties. The Board said that the builder should speak with the neighbors about landscaping to allay their concerns.

Statement of Facts

The subject property is located at 25 Willow Street, on a 10,488 square foot lot in a district in which the minimum lot size is 15,000 square feet. The existing dwelling has a minimum right side yard setback of 19.8 feet. The existing garage has a minimum right yard setback of 6.3 feet.

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The Petitioner is requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing nonconforming structure and garage and construction of a new one-story structure with attic and attached garage that will meet all setback requirements, on a 10,488 square foot lot in a district in which the minimum lot size is 15,000 square feet, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

An Existing Plot Plan dated 9/10/12, a Proposed Plot Plan, dated 9/10/12, a TLAG Calculation Plan, dated 9/10/12, and a 500-ft Rule – Minimum Front Yard Building Setback at 25 Willow Street letter, dated 9/10/12, stamped by Susan E. Sullivan, Professional Land Surveyor, Proposed Floor Plans and Elevation Drawings, dated 9/7/12, prepared by Architectural Design Group, and photographs were submitted.

On October 2, 2012, the Planning Board 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 opinion of this Authority that demolition of an existing nonconforming structure and garage and construction of a new one-story structure with attic and attached garage that will meet all setback requirements, on a 10,488 square foot lot in a district in which the minimum lot size is 15,000 square feet, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, as it shall neither increase an existing nonconformity nor create a new nonconformity.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for demolition of an existing nonconforming structure and garage and construction of a new one-story structure with attic and attached garage that will meet all setback requirements, on a 10,488 square foot lot in a district in which the minimum lot size is 15,000 square feet, subject to the following conditions:

1. The existing garage shall be removed.
2. The proposed garage shall be setback 18 inches from the left side of the house.
3. A window shall be installed at the back of the garage, facing 29 Willow Street.
4. A revised plot and construction plans shall be submitted showing the changes.

The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed constructions plans.

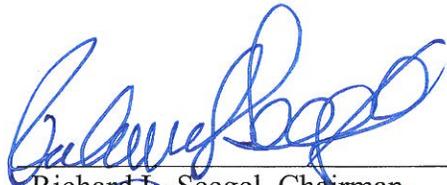
If construction has not commenced, except for good cause, this Special Permit shall expire two years after the date time stamped on this decision.

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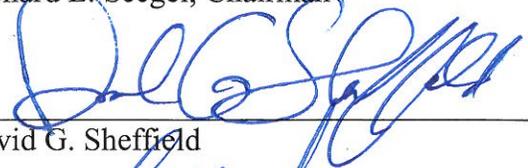
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APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.



Richard L. Seegel, Chairman



David G. Sheffield



Walter B. Adams

cc: Planning Board
Inspector of Buildings
lrm

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#28 BURKE LN.
N/F
NEAL & MALU SISKIND

ZONING DATA

ZONE: SRD 15 - SINGLE RESIDENCE 15

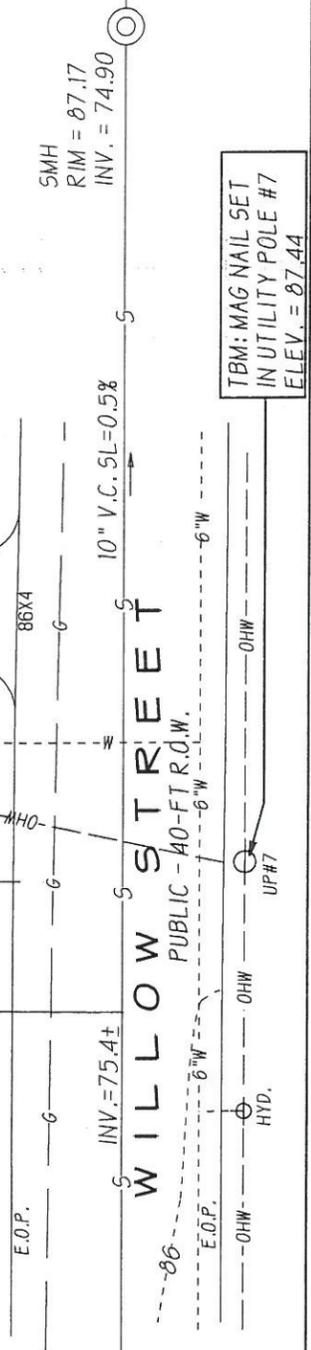
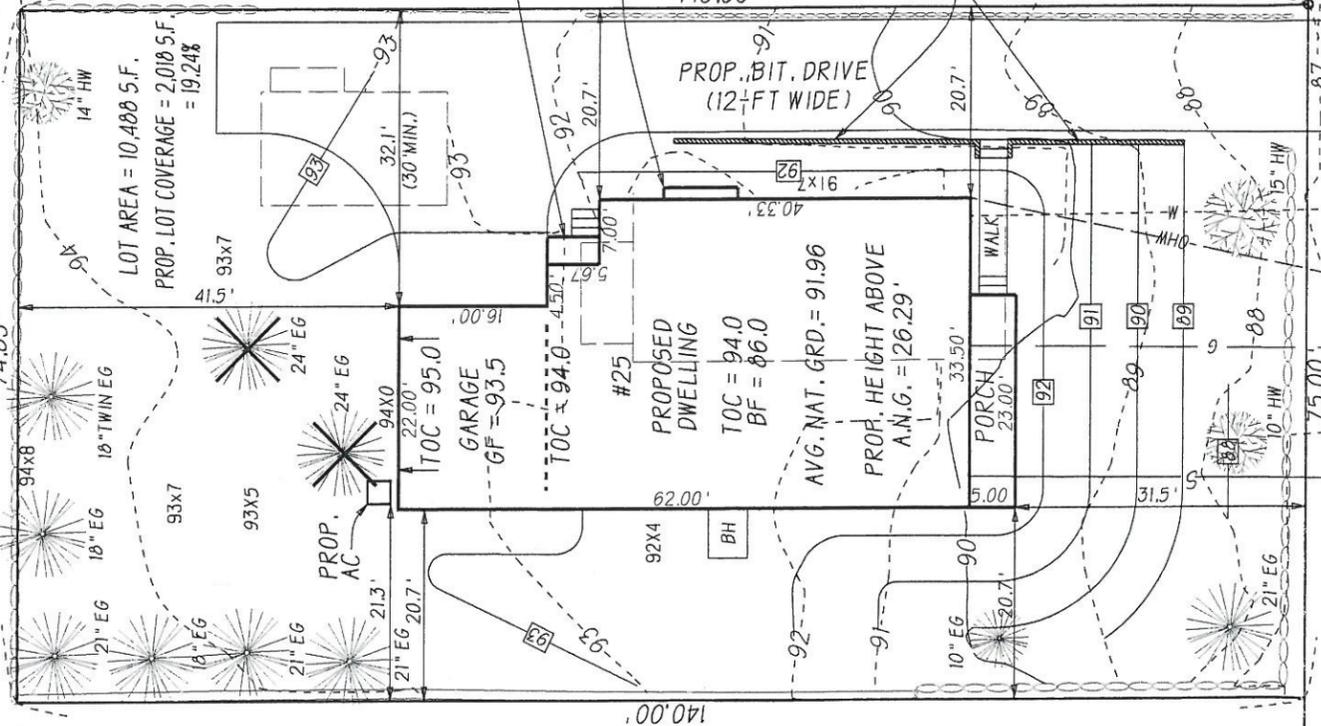
MIN. FRONT YARD: 30'
MIN. SIDE YARD: 20'
MIN. REAR YARD: 15'
MAX. HEIGHT: 36'

MAX. ALLOWED LOT COVERAGE = 20%
(OR 2,500 S.F. WHICHEVER IS GREATER)
MAX. FLAG = 4,300 SQ.FT.

SITE DATA

25 WILLOW STREET
RECORD OWNER: JOSEPH T. FLEMING
ASSESSORS MAP 11 LOT 56
DEED BOOK 6425 PAGE 664
PLAN BOOK 27 PLAN 1243

#29 WILLOW ST.
N/F
HIU CHEUNG & MELINDA WONG



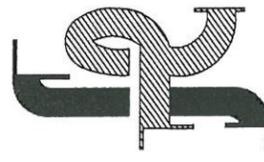
LEGEND

- SMH (circle with cross) SEWER MANHOLE
- W-- WATER SERVICE
- ⊙ UTILITY POLE
- OHW- OVERHEAD WIRES
- G- GAS LINE
- XXXX SPOT ELEVATION
- XXX--- EXIST. 5-FT CONTOUR
- ...XXX... EXIST. 1-FT CONTOUR
- (tree symbol) X" DIAMETER HARDWOOD
- (tree symbol) X" DIAMETER EVERGREEN
- (X symbol) DENOTES EXISTING TREE TO BE REMOVED

**PROPOSED PLOT PLAN
25 WILLOW STREET
WELLESLEY, MASSACHUSETTS**

DATE: SEPTEMBER 10, 2012
SCALE: 1"=20'

Phone: (978)461-2350
Fax: (978)841-4102



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Susan E. Sullivan
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