



## ZONING BOARD OF APPEALS

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

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ZBA 2014-100  
 Petition of Laura & Leandro Manavella  
 38 Marshall Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, November 6, 2014 at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, MA on the petition of LAURA & LEANDRO MANAVELLA requesting a Special Permit/Finding pursuant to the provisions of Section XIVE, Section XVII and Section XXV of the Zoning Bylaw that construction of a second story addition over an existing garage that will meet all setback requirements, on an existing nonconforming structure with less than required right side yard setbacks, at 38 MARSHALL ROAD, in a 10,000 square foot Single Residence District and a Water Supply Protection District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On October 20, 2014, 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 David Himmelberger, Esq., representing Leandro and Laura Manavella, (the Petitioner). He said that the Manavellas live at 38 Marshall Road with their three year old daughter. He said that the request is for a special permit for a nonconforming lot. He said that a corner of the home is 19.2 feet from the property line. He said that the house sits on a lot of 12,407 square feet in a 10,000 square foot district. He said that all other setbacks are conforming.

Mr. Himmelberger said that the Building Inspector advised the builder that under Bjorklund vs Norwell most of the work could be as of right. He said that work included putting a dormer in the front and putting a bay window at the rear and the front. He said that the addition of the master bedroom suite above the existing two-car garage was beyond the Bjorklund exceptions and would require a special permit.

Mr. Himmelberger said that they began with Phase 1 for the work that was permissible without a special permit. He said that the request is for a special permit for the master bedroom suite. He said that the existing ridge height of the house is 21.5 feet and the proposed addition will maintain that height.

Mr. Himmelberger said that this is a modest home. He said that the Total Living Area plus Garage (TLAG) with the addition of the master bedroom suite will only be 2,521 square feet versus the 3,600 square feet allowable. He said that, for the reasons set forth, the proposed addition will not be substantially more detrimental than the existing nonconformity and he respectfully requested that a special permit issue.

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Mr. Himmelberger said that the property is located in a Water Supply Protection District (WSPD). The Board asked what has been done to deal with additional impervious surfaces. Mr. Himmelberger said that six square feet of impervious surface is in the area of the connection between the master bedroom suite and the existing house. He said that it will drain to the side yard which is pervious grassed area.

The Board said that it frequently sees projects that are similar to this that are not broken into phases. Mr. Himmelberger said that under Bjorklund there is a list of features or de minimis changes to a structure that can be made as of right without requiring a special permit. He said that the list includes bay windows and dormers. He said that the Bjorklund Decision says that a one-car garage can be expanded to a two car garage but does not speak about adding space above. He said that the Building Inspector's determination was that a special permit was required for the area above the garage because it is not one of the exceptions under Bjorklund. He said that if the garage was added pre-Bjorklund and the proposed construction met setback requirements, there would be no requirement for a special permit.

The Board asked if Phase 1 is already complete. Mr. Himmelberger said that it is underway and weather tight and ongoing. The Board asked if the Petitioners will amend their building permit. Mr. Himmelberger said that the builder was already lined up and ready to go and the Petitioners did not want to risk losing him. He said that if the special permit is approved and recorded, the Petitioners will request a second building permit.

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

Statement of Facts

The subject property is located at 38 Marshall Road, in a 10, 000 square foot Single Residence and Water Supply Protection District, with a minimum right side yard setback of 19.2 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 construction of a second story addition over an existing garage that will meet all setback requirements, on an existing nonconforming structure with less than required right side yard setbacks, in a 10,000 square foot Single Residence District and a Water Supply Protection District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan, dated 10/13/14, stamped by Robert F. Drake, Professional Land Surveyor, Existing & Proposed Floor Plans and Elevation Drawings, dated 10/1/14, prepared by Falcon Associates Architects, Inc., and photographs were submitted.

On November 4, 2014, 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.

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It is the opinion of this Authority that although construction of a second story addition over an existing garage that will meet all setback requirements, on an existing nonconforming structure with less than required right side yard setbacks 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 for construction of a second story addition over an existing garage that will meet all setback requirements, on an existing nonconforming structure with less than required right side 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.

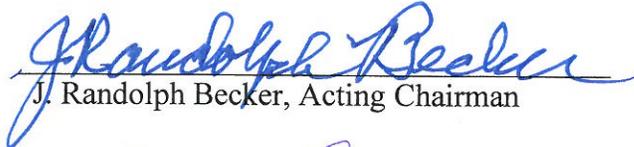
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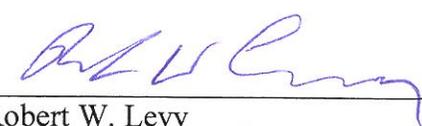
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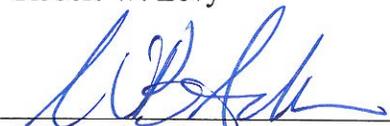
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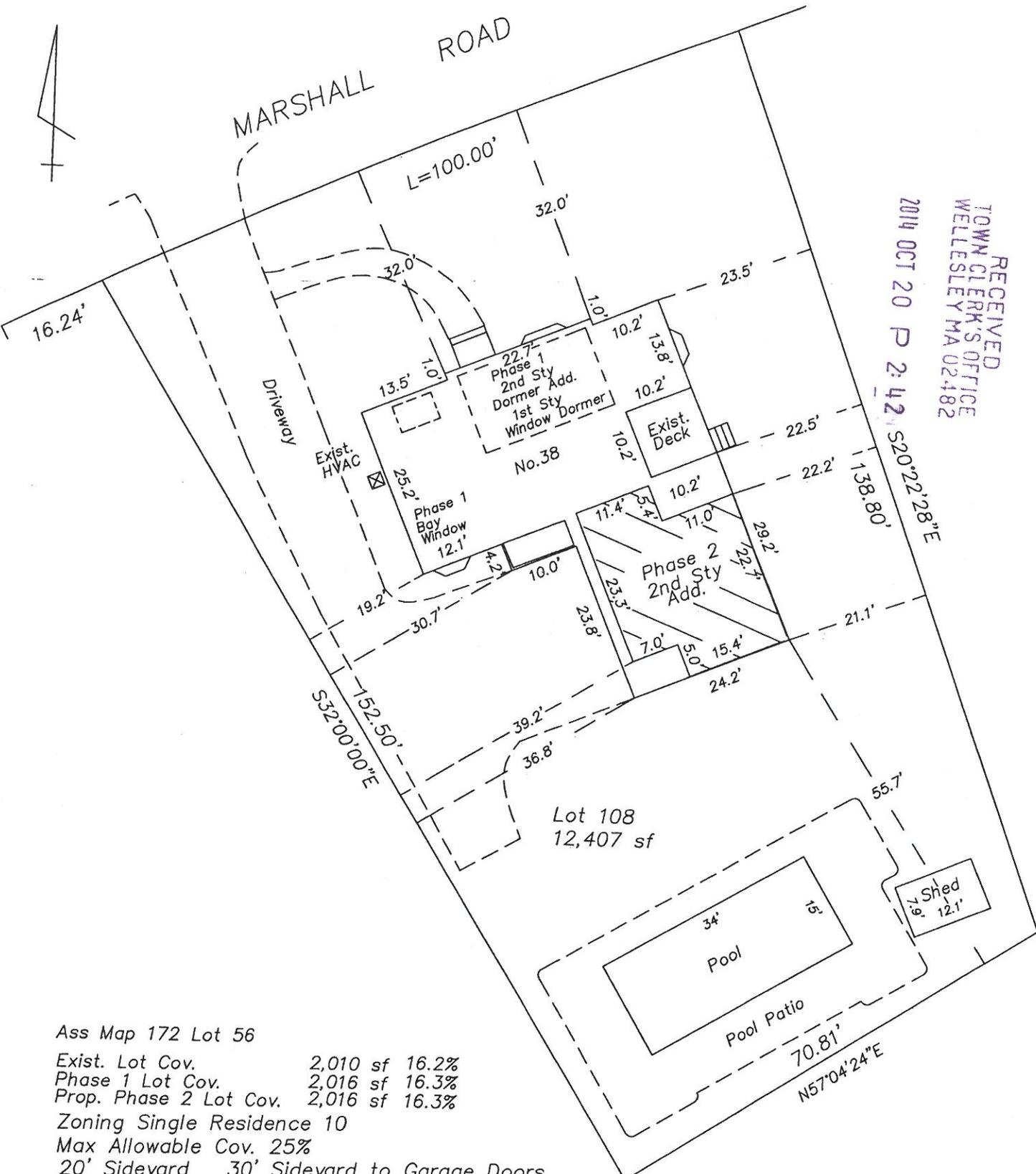
APPEALS FROM THIS DECISION,  
IF ANY, SHALL BE MADE PURSUANT  
TO GENERAL LAWS, CHAPTER 40A,  
SECTION 17, AND SHALL BE FILED  
WITHIN 20 DAYS AFTER THE DATE  
OF FILING OF THIS DECISION IN THE  
OFFICE OF THE TOWN CLERK.

  
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J. Randolph Becker, Acting Chairman

  
\_\_\_\_\_  
Robert W. Levy

  
\_\_\_\_\_  
Walter B. Adams

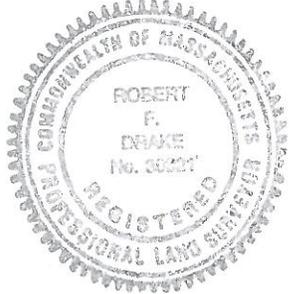
cc: Planning Board  
Inspector of Buildings  
lrm



Ass Map 172 Lot 56  
 Exist. Lot Cov. 2,010 sf 16.2%  
 Phase 1 Lot Cov. 2,016 sf 16.3%  
 Prop. Phase 2 Lot Cov. 2,016 sf 16.3%  
 Zoning Single Residence 10  
 Max Allowable Cov. 25%  
 20' Sideyard 30' Sideyard to Garage Doors

I HEREBY CERTIFY THAT THE CONDITIONS ON THE GROUND ARE THE SAME AS SHOWN HEREON.

SIGNED: 



CERTIFIED PLOT PLAN  
 IN  
**No.38 Marshall Road  
 WELLESLEY MASS.**  
 SCALE 1"=20' OCT 13, 2014  
**Drake Associates Inc.**  
 Civil Engineers Land Surveyors  
 25 Wellesley Ave. Wellesley Mass.  
 508 877-0848  
 FAX 781 416-1865