



## ZONING BOARD OF APPEALS

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

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ZBA 2014-17

Petition of David &amp; Pamela McMahan

81 Russell Road

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Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, March 6, 2014, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of DAVID & PAMELA McMAHON requesting a Variance pursuant to the provisions of Section XIVE, Section XIX and Section XXIV-D for demolition of an existing structure and garage and construction of a new structure with less than required front and side yard setbacks, on a 9,740 square foot lot in a Single Residence and Water Supply Protection District in which the minimum lot size is 10,000 square feet, at 81 RUSSELL ROAD.

On February 18, 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 were David Himmelberger, Esq., Christopher Hall, Architect, and Catherine Wiersema, Landscape Architect.

Mr. Himmelberger said that this matter was previously before the Board last spring, at which time the Board raised various concerns.

Mr. Himmelberger said that this is one of the most unique neighborhoods in Wellesley for a number of reasons. He said that one cannot get to this location without passing a half dozen to a dozen homes that are within 10 feet of Russell Road.

Mr. Himmelberger said that the existing structure is nonconforming on a nonconforming lot. He said that it has insufficient left side yard and front yard setbacks, and has a nonconforming accessory garage with no setback from Russell Road. He said that the prior proposal was to situate the house 6.1 feet from Russell Road. He said that the Board had concerns about the proximity of that location and, in its remarks at the last hearing, indicated that the house needed to be pushed back at least 17 feet. He said that the Board noted that by doing that the front portion of the house would be slightly lower. He said that the Board pointed out that with a side load garage there needs to be a 30 foot setback.

Mr. Himmelberger said that the plans were redesigned. He said that the proposed house will sit now 17.1 feet from the road. He said that the building is shifted slightly left. He said that it will be no worse than the pre-existing left side yard setback. He said that the right side setback will be 37 feet to the garage.

Mr. Himmelberger said that the primary reason for the request for the Variance is due to the steep topography that exists on this lot. He said that it drops 43 feet over 137 feet from Russell Road to Morses Pond. He said that topography is one of the criteria for granting a Variance, similar to one which was granted at 93 Russell Road.

Mr. Himmelberger said that the proposed house is modest at approximately 1,900 square feet. He said that the existing footprint is slightly less than 14 percent and the proposed footprint will 15.4 percent of lot coverage, which is significantly below the permissible limit.

Mr. Himmelberger said that, based upon these issues and the conditions at the site, the Applicant is requesting a Variance for the front yard setbacks and allow, if required, a Special Permit for the side yard setbacks that are not less conforming than what exists today and find that the proposed structure will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Mr. Himmelberger said that this structure is among the smaller of new homes in this area. He said that it respects the lot on which it sits. He said that, while the homeowners are not entitled to the use of the garage in the front yard with zero setback as a means by which a pre-existing nonconforming setback would exist, the removal of that garage is of significant benefit to the neighborhood. He said that siting the house at 17 feet from the road would be appropriate.

The Board asked why the building was moved more to the left than the original plan. The Board asked if the neighbors on that side had been consulted. The Board said that a nice job was done to address its concerns. Mr. Hall said that the house was moved over because the Board had pointed out that the garage doors were within 30 feet of the right side lot line. He said that there was concern that the walkway, even though there was a debate as to whether the walkway was considered a structure because it was a means of egress for the house, could be in violation of the setback. He said that the point was raised that the existing house is 9.4 feet from the left side lot line. He said that the Board said that they wanted to hold the 9.4 feet as a Special Permit with respect to the existing setback. He said that his original thought was to center the house so that there would be more space on both sides but the Board recommended that it be shifted over for the garage doors and the walkway and to maintain the 9.4 foot setback on the left side. Mr. Himmelberger said that the 9.4 foot setback that remains is at the balcony that is deep in the lot and that the house up front has a 12.2 foot setback where it had been 9.4 feet.

The Board asked about the Order of Conditions. Mr. Himmelberger said that the Wetlands Protection Committee (WPC) had a meeting that was postponed due to weather. He said that they voted unanimously at their meeting on February 25, 2014 to issue an Amended Order of Conditions, to be filed shortly. Ms. Wiersema said that she had presented the plans to the Wetlands Protection Committee (WPC). She said that the Order of Conditions is not new but rather is amended. She said that all of the conditions will remain exactly the same.

The Board said that the Planning Board stated in its recommendation that the house could be built without the necessity for a Variance.

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

The Board voted unanimously to continue the petition to April 3, 2014.

**April 3, 2014**

Presenting the case at the hearing were David Mr. Himmelberger, Esq., Christopher Hall, Architect, David McMahon, (the "Petitioner") and Catherine Wiersama, Landscape Architect.

Mr. Himmelberger said that the petition had been continued from the last hearing because, although the Wetlands Protection Committee (WPC) had voted to favorably amend the previously issued Order of Conditions (O of C), the vote and decision were not yet in writing. He said that the hearing was continued so that the written decision could be provided to the Board.

Mr. Himmelberger said that the amended O of C was required due to a redesign of the proposed new house which came about after the Applicant appeared before the Board last year. He said that, at that time, the proposal called for a house to be located 6 feet from Russell Road, which was an improvement from the existing garage with no front yard setback. He said that the Board was concerned that 6 feet is too close and felt that 17 feet would be more appropriate. He said that there was redesign work done to accommodate pushing the house back 17 feet. He said that the garage was turned to be a side-facing garage and additional landscaping was necessitated.

Mr. Himmelberger said that this is a nonconforming lot with a pre-existing nonconforming structure with a topographical challenge in that the land drops off 44 feet in a 35 percent grade from Russell Road to Morses Pond. He said that there are no retaining walls that required special permits as part of the design that is currently before the Board.

Mr. Himmelberger said that there was a concern expressed at a previous hearing about the neighbor on the left side and their support for the project. He said that abutting neighbor was present at the hearing to express support.

Mr. Himmelberger said that the Petitioner is seeking a variance for front yard setbacks based on the criteria of severe topography and the substantial hardship to push the home back further due to additional construction costs that would result. He said that the slope is not even over the entire length of the lot. He said that if the house was pushed further back it would be located at the steepest portion of the slope. He said that additional foundation walls and lateral support and costs would ensue. He said that they are also constrained by the 25 foot buffer. He said that, with the steep slope that does not affect all homes in this district, literal enforcement of the Zoning Bylaw with regard to the front yard setback would cause a substantial hardship financially and otherwise in that it begins to cause the house to be in a more stacked and vertical position with multiple floors as opposed to the two floors and basement that are currently proposed.

Mr. Himmelberger said that they believe that the desired relief could be granted without detriment to the public good and without nullifying the intent of the bylaw.

Mr. Himmelberger said that this will be a modest home at 1,967square feet. He said that it has been designed to be sensitive to the neighborhood. He said that they addressed the Board's concerns by pushing the house back to 17 feet. He said that the request is for a variance for the front yard setback and

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a special permit for the left side yard setback. He said that the right side yard setback and the rear yard setback are both compliant.

The Board said that the Order of Conditions does not reference a specific set of plans with a date on them.

Barbara Burke, 89 Russell Road, said that she is the neighbor on the immediate left. She said that she was present at the hearing in support of the petition. She said that it has been a very transparent process. She said that the McMahon's have been very open with the neighbors and have shared information as time went along.

The Board asked if Russell Road is a town or a private road. Mr. Himmelberger said that it is a private way that will require Adequacy of the Way review before the Planning Board if the Zoning Board grants the variance and the project goes forward.

The Board asked if the residents of the road talked about improving it. Mr. Himmelberger said that he was not aware of that. He said that when 93 Russell Road was subject to Zoning relief and Adequacy of the Way, there was a requirement that there be some repaving in front of that house.

The Board said that it had some concerns about Russell Road. The Board said that it is a one lane road that is in extremely poor condition. The Board said that in most places it is impossible for two cars to pass. The Board said that it was concerned about a fire engine getting down there. Mr. Himmelberger said that they will be improving the passage over the road because the garage will be removed. He said that he did not foresee any impediments to getting Adequacy of the Way approval based upon what was necessary to be done at 93 Russell Road. The Board said that since the homeowner will be rebuilding, he should repave the portion of the road along his frontage. Mr. Himmelberger said that there is a strong possibility that the Planning Board will require that. The Board said that there should be some coordination between this project and the project at 77 Russell Road. The Board said that they cannot have big trucks coming down the road at the same time.

Ethan Parsons, Assistant Planning Director, said that there is nothing before the Planning Board for review of Adequacy of the Way because a building permit application is what would trigger it. He said that the Planning Board required repaving at 93 Russell Road. Mr. Himmelberger said that the Planning Board usually requires a Cape Cod berm when there is paving done.

Ms. Wiersama described the landscaping for the project. She said that there will be a drain all around the garage and the terraces have drains. She said that there were drainage conditions in the O of C.

Mr. Parsons said that the Planning Board had not re-reviewed the petition, which is why its recommendation had not changed.

The Board said that the bylaw standard is that the soil condition, shape of the lot or topography affects this property and not generally the zoning district in which it is located. The Board said that the whole district does not have the severe topographical drop off that this property has.

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Statement of Facts

The subject property is located at 81 Russell Road, on a 9,740 square foot lot in a Single Residence and Water Supply Protection District in which the minimum lot size is 10,000 square feet.

The Petitioner is requesting a Variance pursuant to the provisions of Section XIVE, Section XIX and Section XXIV-D for demolition of an existing structure and garage and construction of a new structure, with less than required front and side yard setbacks, on a 9,740 square foot lot in a Single Residence and Water Supply Protection District in which the minimum lot size is 10,000 square feet.

A Plot Plan, dated 2/12/14, stamped by Clifford E. Rober, Professional Land Surveyor, Proposed Floor Plans and Elevation Drawings, dated 2/2/14, prepared by Christopher Hall, Architect, Letter in support of Variance, dated 2/18/14, from David J. Himmelberger, Esq., and photographs were submitted.

On February 25, 2014, the Planning Board reviewed the petition and recommended that the petition be denied.

On March 18, 2014, the Wetlands Protection Committee issued an Order of Conditions, MassDEP #324-0707

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 literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the petitioner owing to circumstances relating to topography of the land, which does not generally affect the zoning district that it is in, and desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

Therefore, the requested Variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw is granted to allow demolition of an existing structure and garage and construction of a new structure with less than required front and side yard setbacks, on a 9,740 square foot lot in a Single Residence and Water Supply Protection District in which the minimum lot size is 10,000 square feet, 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 Variance shall expire one year after the date time stamped on this decision.

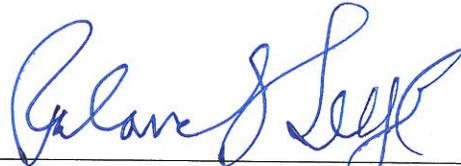
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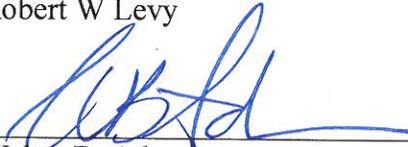
APPEALS FROM THIS DECISION,  
IF ANY, SHALL BE MADE PURSUANT  
TO GENERAL LAWS, CHAPTER 40A,  
SECTION 17, AND SHALL BE FILED  
WITHIN 20 DAYS AFTER THE DATE  
OF FILING OF THIS DECISION IN THE  
OFFICE OF THE TOWN CLERK.



Richard L. Seegel, Chairman

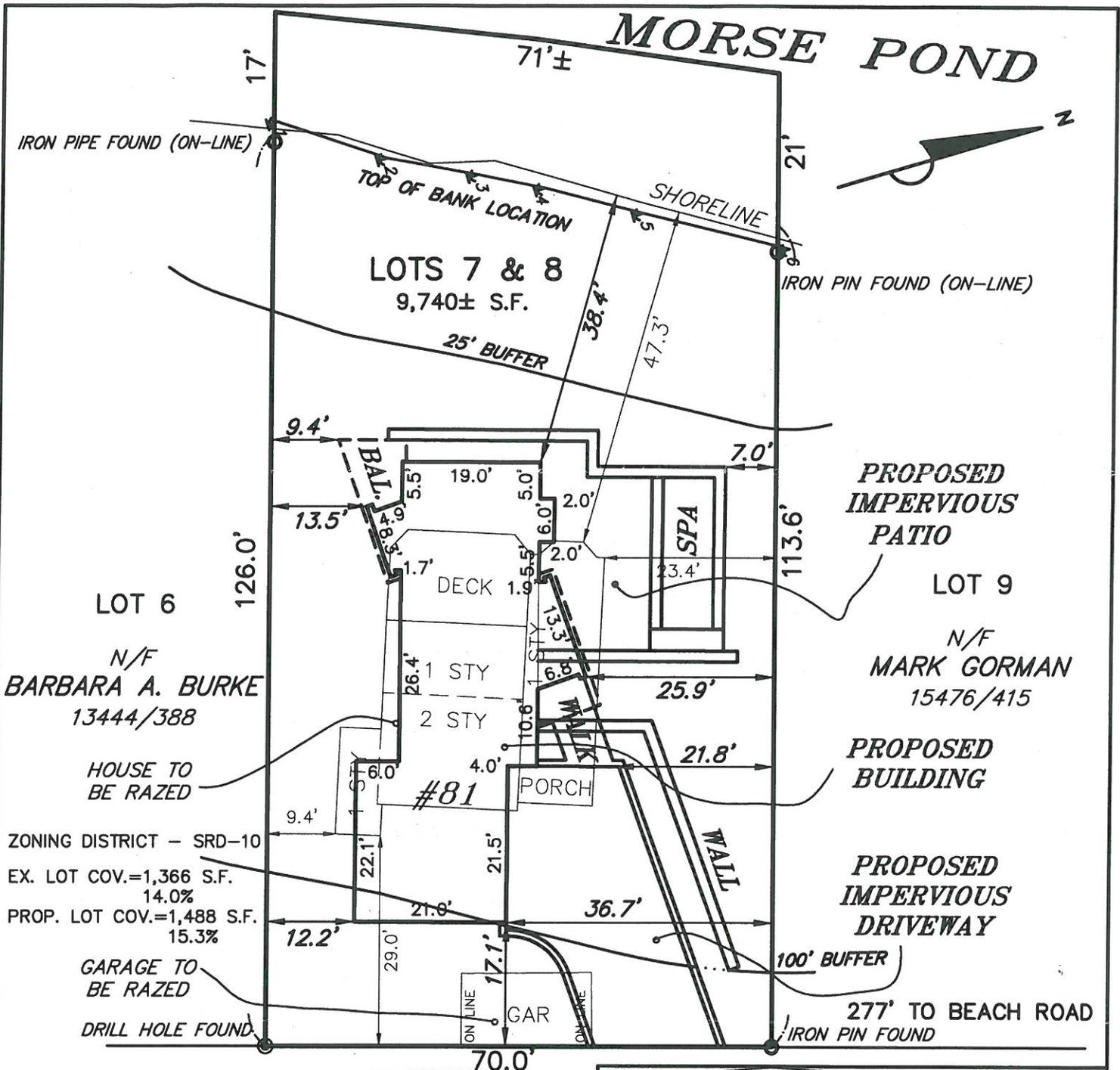


Robert W Levy



Walter B. Adams

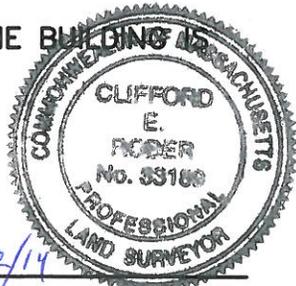
cc: Planning Board  
Inspector of Buildings  
lrm



# RUSSELL ROAD

NOTE: BASED ON CURRENT MAPS, THE 500 FOOT RULE DOES NOT APPLY.

I HEREBY CERTIFY THAT THE BUILDING IS LOCATED AS SHOWN.



CLIFFORD E. ROBER, PLS DATE

OWNER: DAVID S. & PAMELA McMAHON

## PROPOSED PLOT PLAN #81 RUSSELL ROAD IN WELLESLEY, MA (NORFOLK COUNTY)

SCALE: 1"= 20' DATE: 2/12/2014



**ROBER SURVEY**  
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