



ZONING BOARD OF APPEALS

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

RICHARD L. SEEGEL, CHAIRMAN
 J. RANDOLPH BECKER, VICE CHAIRMAN
 DAVID G. SHEFFIELD

LENORE R. MAHONEY
 EXECUTIVE SECRETARY
 TELEPHONE
 (781) 431-1019 EXT. 2208
 web: www.wellesleyma.gov

ROBERT W. LEVY
 WALTER B. ADAMS
 DEREK J. REDGATE

ZBA 2014-30
 Petition of Kenneth & Julia Knudson
 361 Linden Street

RECEIVED
 TOWN CLERK'S OFFICE
 WELLESLEY MA 02482
 JUN 19 P 3:30

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, May 8, 2014, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of KENNETH & JULIA KNUDSON requesting a Variance pursuant to the provisions of Section XIX and Section XXIV-D of the Zoning Bylaw for construction of a two-car garage with office space above, with less than required front yard setbacks, on a corner lot in a 10,000 square foot Single Residence District, at 361 LINDEN STREET.

April 22, 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., representing Kenneth and Julia Knudson, (the "Petitioner"), Mike Tartamella, Architect and Jason Lavoie, Civil Engineer, Jillson Engineering.

Mr. Himmelberger said that the request is for a variance to rectify a long standing problem that is only getting worse, namely significant and devastating flooding of the Applicant's home at the lower level. He said that the proposal is to fill in the driveway area and seal off the existing two-car garage that is beneath a portion of the home and construct a two-car garage above grade immediately abutting the existing structure which will be within the front yard setback on Geraldine Drive. He said that it is a corner lot that fronts on Linden Street and Geraldine Drive.

Mr. Himmelberger said that his clients purchased the home in 2011 and commenced extensive interior and exterior renovations to the home and extensive landscaping upgrades.

Mr. Himmelberger said that the existing house has a two-car garage beneath the family room. He said that a drain in the driveway connects to town drains that run underneath the railroad tracks and discharge to an ephemeral stream at Hunnewell Field.

Mr. Himmelberger said that, in July of 2012, after finishing renovations in the basement area, the Knudsons sustained a major flood with up to 2 feet of water. He said that water crested over the driveway. He said that Linden Street is at a low point at the driveway. He said that Rockland, Clifton, Shaw, Kirkland and Upwey all drain down to Linden Street. He said that the Knudsons sustained in excess of \$24,000 in damage. He said that they notified the Department of Public Works (DPW) and

were told that the town's drainage system was insufficient to handle the stormwater from the July, 2012 event. He said that there was no remedial work performed by the town at that time.

Mr. Himmelberger said that on September 1, 2013, the Knudsons sustained another catastrophic flood with 4 feet of water in the driveway and 3 feet of water in the finished basement. He said that they lost 3 parked vehicles, for losses in excess of \$20,000.

Mr. Himmelberger said that the source of the water is not from the Knudson's property but is water that is cresting down Linden Street and over the driveway apron. He said that the water is backing up from the drain in the driveway because the outlet is one foot higher than the outlet at Hunnewell Field. He said that when the outlet at Hunnewell Field fills up, the outlet in the driveway backs up. He said that there are two contributing factors for the water.

Mr. Himmelberger said that when the Knudsons reached out to DPW they learned that this is a chronic problem that has gotten worse over time. He said that Linden Street has become more elevated through repaving and storms have become more severe. He said that David Hickey, Town Engineer, included in his correspondence to the Knudsons a letter from John Bezanson, Town Engineer, 1986, in which he agreed that the solution was to fill the low area at the driveway and build at street level. He said that 27 years later, Mr. Hickey was of the same opinion that moving to the highest extent possible is the most logical protective measure.

Mr. Himmelberger said that his clients worked with Patrick Ahearn, Architect, to design a solution that involves filling in the driveway, sealing off the basement garage, while constructing an above ground two-car garage to replace the basement garage. He said that the proposed garage will be two square feet larger than the existing garage. He said that, due to the site layout, that involves building in the setback area.

Mr. Himmelberger said that the Applicant believes that a variance would be appropriate in this instance because literal enforcement of the Zoning Bylaw (ZBL) would involve substantial hardship, both financial and otherwise. He said that the financial hardship is self-evident with the destruction of the Knudson's property. He said that the hardship is not self-created. He said that the Knudsons did not build the house. He said that desired relief can be granted without substantial detriment to the public good and without nullifying or derogating from the intent or purpose of the ZBL.

Mr. Himmelberger said that the Knudsons have three young children who now live in fear of significant rain. He said that the previous week when there was a prediction for three inches of rain, the DPW came out and sandbagged the driveway. He said that gave rise to the concern and anxiety of the children that they would be flooded out again.

Mr. Himmelberger said that it is remarkable that no one has been hurt due to electrical issues. He said that Mr. Knudson ran out in the height of the September storm to check on the catch basins when a lightning bolt struck a tree on Kirkland Circle, splitting it in half.

Mr. Himmelberger said that the Planning Board observed that the house sits in the lowest elevations of the lot in a fairly small and highly impervious bowl. He said that is a topography issue that provides a basis for granting the variance. He said that the Planning Board was of the opinion that a variance could

be granted without substantial harm to the public if the Knudsons could prove that their proposed project would not exacerbate the potential for flooding on properties in the vicinity.

Mr. Himmelberger said that they refined the plan that was originally submitted. He said that they will design and accept as a condition of the variance, that all stormwater runoff from the new garage and driveway area will be captured on-site. He said that they can provide for 4 inches of rain in a 24 hour period with the current design. He said that they are not able to solve the Town's insufficient drainage problem in the area. He said that they will not add any additional water to the area as a result of the granting of the variance. He said that it is the Knudsons wish to stop acting as a detention pond for the Town's drainage problems.

Mr. Himmelberger said that the aesthetic design of the house with the garage on the right side abutting Geraldine Drive serves as bookends to Geraldine Drive as the house across at 351 Linden Street also has its garage on that side. He said that Geraldine Drive is a newer subdivision that was laid out in 1968. He said that it had the full 40 foot right of way between the property at 361 Linden Street and 351 Linden Street. He said that while this is moving over into the setback, it will not be moving into a neighbor's side yard area. He said that, aesthetically, the street can accommodate that.

Mr. Tartamella displayed a video on his laptop computer (retained by proponent) that showed the amount of water in what Mr. Tartamella represented was a moderate storm.

Mr. Tartamella said that they looked at the lot to come up with the best solution to recreate a garage above grade. He said that a garage at the rear proved to have more impact to abutters and was not a great design solution for tying back into the existing house. He said that they ended up with a design that mimics the existing garage with a minimum dimension of 22 feet across the front. He said that the long side will be 26 feet along Geraldine Drive. He said that they tried to pay close attention to scale, character of the neighborhood, the existing home and financial feasibility in terms of construction. He said that the longest drive will be on Linden Street and they will keep the same curb cut. He said that they were able to soften the corner on Geraldine Drive and were able to create a connection that looks like it is original to the house.

The Board asked if they had considered having a straight driveway from Geraldine Drive. Mr. Tartamella said that proved to be a very short driveway. He said that it would not have reduced the setback there because of the 22 foot box. He said that the box will be the same as the existing to get the required depth. He said that 22 by 22 are the minimum dimensions for a residential two-car garage. He said that they were trying to be responsible in not asking for anything that they did not have already. He said that they felt that the hardship is significant enough to warrant the request for a variance.

The Board said that the house is currently conforming. Mr. Tartamella said that the Total Living Area plus Garage (TLAG) for the house will be below the threshold for Large House Review (LHR) in this district.

Mr. Lavoie described the plans to fill in the grading. He said that the plan is to keep the existing catch basin at the back of the lot. He said that they wanted to make sure that they would not increase any runoff to the abutters. He said that the roof runoff will run to the catch basin. He said that the proposed driveway and addition will add approximately 2,000 square feet. He said that the proposed infiltration

system will be able to handle a 5-Year Storm Event. He said that there will be 6 Cultec Units with stone surrounding them that will attach to the addition with downspouts. He said that a trench drain is proposed at the bottom of the driveway.

The Board asked about the September storm. Mr. Lavoie said that storm had a peak intensity of 3 inches of rain in an hour, which would be more of a 10 to 25 year storm event. He said that was more of a flash flood. He said that 1 ¼ inches is the typical peak for a 5 year storm event over 24 hours. He said that he will submit the drainage system design to the Town Engineer.

The Board asked about sealing off the opening at the basement level. Mr. Tartamella said that the foundation is poured in place concrete. He said that the garage doors can be blocked up and waterproofed with a shock board that will prevent the waterproofing from being damaged by any backfill or any stones that are in the backfill. He said that they are fairly confident that they can seal that portion and will do perimeter drainage to capture roof drainage and groundwater to put into the Cultec systems.

The Board asked about the existing drain. Mr. Lavoie said that they will put an extension on top of the existing drain. He said that they will fill in the area but there will be a low point of approximately 2 feet. He said that the plan is to put a 2.5 foot extension on the existing catch basin. He said that there is a small portion of the rear yard that currently drains there. He said that they designed the system so that the flow will not be changed to go toward the neighbor.

Mr. Himmelberger said that because the inlet of the new drain will be significantly higher than the outlet at Hunnewell Field, it will not back up. The Board said extension of the drain created additional storage. The Board said that, depending on the hydraulics, it may longer before the water overflows. Mr. Lavoie said that there is a detail on the plan to install a backflow preventer.

The Board said that it was hard to understand on the plans what the existing drainage condition is versus what the proposed condition will be like. The Board said that there will be less impervious surface after, so the lot itself will produce less runoff.

The Board questioned whether there was another conforming place where they could have provided space for the second floor loft office. The Board said that the property owner across Geraldine Drive will be the most immediately impacted neighbor, as well as the neighbor who lives behind on Geraldine Drive. The Board said that, although the architectural design is nicely done, they will be ending up with a 1.5 story structure rather than a one-story structure.

Mr. Tartamella said that they were looking to design a garage that is appropriate in scale with the existing house and the neighborhood. He said that they included a Nantucket dormer on the Geraldine Drive side that they would be happy to revisit. He said that they could eliminate the center portion. He said that the interior ceiling height for the proposed garage will be 8 feet. He said that it will be 2.3 feet lower than the existing ridge and also provides the connection to the existing structure. He said that there is a decent sized grouping of Evergreens along Geraldine Drive that provide an adequate amount of screening. He said that they wanted to add some architectural variety to the asphalt roof.

The Board asked about retaining walls. Mr. Lavoie said that there is one proposed retaining wall.

Graham Ward, 8 Geraldine Drive, said that he is the southerly abutter, immediately behind the house. He said that their backyards abut. He said that his house was built in 1768 with a fieldstone foundation. He said that they were concerned about construction that could cause vibrations that could damage the foundation and cause water to get in. He said that they are also concerned about the fill and what it will do to the water table to perhaps cause them to have water that they never have had. He said that if the drain does not have the hydrostatic pressure that will cause the water to back up into the Knudson's yard, it will back up somewhere else. He asked that the Board relay these concerns to the Town. He said that this is not a single homeowner issue but rather an issue for the neighborhood. He said that the two neighbors who live directly across from them both have had water problems for as long as the Wards have lived in their house. He said that one lady has three sump pumps that drain onto the next door neighbor's property. He said that there is no place else for the water to go.

Mr. Ward said that the Knudsons need to have their problem solved. He said that the Town needs to resolve this in terms of the neighborhood.

Mr. Ward said that a lot of earth will be moved. He asked how long the construction will take and where the trucks will be parked. He asked about the possibility for dust control. He said that when the Knudsons first moved in they had some grading work done and the Wards were unable to use their screened porch or open the windows in their den because the contractor was raising dust.

Mr. Ward said that when he purchased his house there were no nonconforming houses blocking it. He said that the Knudsons have shown him the plans and have been very transparent about the process. He said that it is a big structure and the Wards no longer see the street when they sit in their den.

Mr. Ward said that the Knudsons had asked about permission to do some grading on his land to form an area to capture excess water until it can drain. He said that the Wards will need to see information that will assure them that they will not be stuck with a pool or a marsh back there that they will have to abut. He said that temporary pools after heavy storms happen all over town. He said that anything back there that does not drain reasonably promptly would be upsetting to them.

Mr. Ward said that the current condition has been there since the 1960's and the garage underneath was built when the house was constructed. He said that the original construction was for a wide house. He said that extending the almost roof height garage structure across is a problem for the Wards.

The Board said that the water problem is surface water not groundwater. Mr. Ward said that if you divert surface water, it has to go somewhere. He said that there is a large hole there that becomes a lake from time to time. He said that if that hole is filled up, much of the water that is trying to come into the driveway will be diverted back out onto Linden Street. He said that it will not all come streaming past the driveway to the collection point. The Board said that the water will go to the catch basins in Linden Street. Mr. Ward said that the catch basins are grievously inadequate. He said that was why he was asking the Board to send a message to the Town that they want the Knudsons to be able to solve their problem but also want the Town to recognize the neighborhood's problem.

The Board said that it saw the 40 year record of what has happened on this property. Mr. Ward asked if it would be appropriate for the Board to send a memorandum to the Town Engineer requesting that the town pay more attention to this problem in the neighborhood.

RECEIVED
TOWN CLERK'S OFFICE
LESLIE, MA 01882
JUN 19 11 33 AM '14

Robert Pettigrew, 9 Geraldine Drive, said that there is a drain from the Wards that goes to his driveway and then under the railroad tracks and across to Hunnewell Field. He said that during the September storm they got 2.5 feet of water which is the height of his backyard. He said that anything over that goes to the railroad tracks and ponds. The Board clarified that the water overflows and does not go through the pipes. Mr. Pettigrew said that the pipes are inadequate. He said that Geraldine Drive is below Linden Street. He said that Geraldine Drive is a bath tub. He said that there is a crown in his driveway. He said that water has to rise 6 to 8 inches over the crown to spill over onto the driveway. He said that the driveway fills up. He said that their problem is a catch basin problem. He said that the pipes are not doing their job. He said that his concern is to not get any more water than he does now. He said that additional water will make his yard a pond that will go all the way to the railroad tracks. He said that they need someone from the Town who has knowledge of catch basins. He said that he would like to have the catch basins enlarged on Kirkland Circle and Linden Street to take up the water that they will get when the area at the Knudsons is filled in.

Mr. Pettigrew said that he does not wish to be damaged by the proposed situation. The Board said that Mr. Pettigrew should speak to the DPW because they are the people who have the training and equipment to deal with the situation and are, in fact, the entity charged with doing those things.

Mr. Pettigrew said that larger catch basins are needed to pick up the water so that it does not end up 6 to 8 inches on Geraldine Drive. He said that he did not know if the project at the Knudsons will increase or decrease the problem. The Board said that the Knudson's representation is that they will keep all the water from the proposed construction on their property. The Board said that water that is in Mr. Pettigrew's driveway is not water that is falling on the Knudson's roof. The Board said that it is water that is coming down Kirkland Circle, Upwey Road and from other places between Route 9 and Linden Street.

Mr. Pettigrew said that the Knudson's drain goes under Mr. Ward's driveway and drains down to his driveway. The Board said that the only way that water gets into that drain is if it overtops the lip at the Knudson's driveway and flows into the pipe that drains at Mr. Pettigrew's driveway. Mr. Pettigrew said that if the drain remains, he will get additional water in his driveway.

Mr. Himmelberger said that water comes down Linden Street and overcrests down the Knudson's driveway. He said that the water will no longer be able to do this. He said that because the Knudsons will no longer be acting as the Town's detention pond, there is more water available to go elsewhere. He said that they are seeking relief to no longer serve as the Town's detention pond and are making a commitment to capture the 5 year storm runoff for the new addition and the driveway. He said that they will not be adding anything from this construction to add to the problem.

Mr. Pettigrew said that the drain will remain. The Board said that they will be extending the drain upwards so that it will no longer catch water at the low elevation at the bottom of the driveway. The Board said that the inlet to that pipe will be different from the existing inlet.

The Board said that it is not clear that whatever the Knudsons do on their property will solve the neighborhood's problems. The Board said that the Knudsons are trying to avoid being the detention pond for the entire neighborhood.

The Board said that the issue is that, in order for it to grant a variance, it has to find that there will be no substantial detriment to the public good. The Board said that the water that the Knudsons are currently retaining could end up in someone else's basement.

Mr. Pettigrew said that water above 2.5 feet will not only fill up his backyard but will go all the way to the railroad tracks.

Mr. Himmelberger said that the Knudsons could fill in their driveway and not put any drainage on their property. He said that the water that they would no longer be accepting in the detention pond would have the same situation whether they build the garage or not.

Mr. Pettigrew said that he wanted to talk with someone who knows about drainage issues. He said that he wants larger catch basins for Kirkland Circle, Linden Street and Geraldine Drive. The Board said that Mr. Pettigrew needs to speak to the DPW. The Board said that it can put conditions on this particular application to the best of its ability to ensure that the calculations are accurate and the representations that any water that falls on the property or the hard surfaces such as the roofs or paved area will remain on property and will not filter onto the neighbors' properties or back into the street. The Board said that it can require that the design be reviewed by the DPW Engineering Department to confirm that the calculations are reasonable and accurate. The Board said that it cannot require that the Town make a change to its street and drainage system.

Linda Pettigrew, 9 Geraldine Drive, said that a study was done that shows that water ends up at Hunnewell Field. She said that there are three conduits (pipes) under the railroad tracks. She said that there are three pipes going through a conduit that is made out of granite blocks shaped into a rectangular hole. She said that the Town does nothing about keeping the area clean. She said that between the baseball field and the frog pond there are cat tails growing in the drain area. She said that DPW cleaned it out once after the Pettigrews asked them to. She said that anything in there slows down the water flow. She said that once that happens, the water will back up. She asked if the Town could get permission from the Railroad to get under the tracks to fix the granite block issue. She said that there is more than one property absorbing the water on Geraldine Drive. She said that the Knudsons are not taking the whole brunt of the water issue.

Ms. Pettigrew said that they added a second catch basin at the bottom and top of their driveway. She said that no one else on the street has done anything like that. She said that water will go where it can flow more quickly. She said that the more things that they add, the more they are drawing water towards them. She said that water can go down Geraldine Drive on the side where the Wards live and turn around and come back. She said that is how forceful the water can be. She said that someone from DPW told her that, even with another catch basin, she would have gotten that much water because of the size of the storm.

Ms. Pettigrew said that when Upwey was constructed with new houses, the Town only agreed to allow Logan Huffman to build those houses if the Town and he worked out a plan for the drainage, which included Geraldine Drive and Upwey Road. She said that resolved the issue for a while. She said that since then there have been more storms and the height of Linden Street was increased with paving. She questioned whether new catch basins were increased in size when Linden Street was paved at the time of the new construction at Linden Square. She said that she did not think that was an issue that the Board

can say that does not concern it. The Board said that it said that is something that it does not have any power to do something about.

Ms. Pettigrew said that the Town has restrictions as to what can or cannot be built. The Board said that is independent from the drainage system of the Town. Ms. Pettigrew said that the Planning Board has to take into consideration the drainage issues. She said that the ZBA cannot turn a blind eye and say that this issue is going to go away by itself and it is not going to make a difference if somebody makes a change to the structure of their home. She said that when they moved to Geraldine Drive there was a drought that lasted for a few years.

The Board said that somebody realized a while ago that there was a problem at the railroad tracks. Ms. Pettigrew said that she did not think that the problem was to this dimension. She said that the September 2013 storm was 3 inches of rain in a one hour period with lightning flashes during the whole duration. She said that they have absorbed a lot of this and would like to have some attention paid to the issue.

The Board said that it does not want to exacerbate the problem for the neighborhood. The Board said that the only thing before it is this petition, not the Town's drainage plan, drainage system, or solving those problems. The Board said that if this will cause problems for the neighbors, it is within the variance standards that the Board has to consider.

The Board said that the Proponent asserts that topography is an issue and that is one of the criteria for granting a variance. The Board said that a variance is a mechanism under the state statute and town law which allows the Board to grant relief to an applicant to build outside the Zoning parameters. The Board said that, in this case, the Applicant is asking to build within the setback, which is otherwise prohibited. The Board said that, in order for it to consider that, there has to be a hardship that is related to the topography, shape, or soil condition of the lot. The Board said that the Applicant is asserting that the basis for the variance is the topography of the site, with what is essentially a bowl causing the hardship. The Board said that it also has to find that granting the Applicants the relief that they are seeking is without substantial detriment to the public good. The Board said that it interpreted that as not pushing the problem onto somebody else. The Board said that it would need to have some assurances. The Board said that in today's world a 5 year storm is minimal. The Board questioned whether it has enough information to ascertain what effect this will have on the neighborhood.

The Board said that it has to consider whether the Applicant has accounted for all of the water that falls on the lot. The Board said that under the current arrangement, water can overtop the Applicant's driveway, flow down the driveway and act as a detention basin. The Board said that is not the Applicant's water. The Board said that it has to look at the proposal to see if the result will be that water will be going into someone else's basement.

Mr. Himmelberger said that there is a quantitative difference and qualitative difference between water ponding in someone's backyard as the Pettigrews have indicated as opposed to ponding inside someone's house. He said that they are not equivalent. He said that, in terms of looking at detriment to the public good, he did not see that. He said that the Applicant could eliminate the bowl without the garage and the same water that the Board is concerned about would still look for the place it is going if the Board granted a variance. He said that when you balance those interests, the compelling conclusion is that the Knudsons should be allowed to fill in the driveway and build a replacement garage above grade. He asked the

Board to be cognizant of the fact that it is turning things on its head to say that because this will no longer act as the detention pond, they will be causing harm to the public.

The Board said that it needs to know what will happen to the water. Mr. Himmelberger said that the water will continue to go where it goes now. The Board said that it will change. Mr. Himmelberger said that the water that does not come into the driveway will continue along the same path.

The Board said that it could add a condition requiring a large underground storage system. The Board said that is not something that it usually requires for residential properties. Mr. Himmelberger asked how it is the Knudson's obligation to act as the receptacle. The Board said that if they were not adding another ten feet and going into the setback, they could do that but the request is for a variance.

Mr. Pettigrew said that the Knudson's problem is identical to his. He said that his driveway, garage, cellar, furnace, and water tank have been under 3.5 feet of water. He said that if it gets much higher than that, it would fill not only the driveway, the garage and the cellar, it would go all the way to the railroad tracks. The Board said that it recognizes that there is a drainage problem in this part of town.

The Board said that in Mr. Hickey's response to the Knudsons dated January 3, 2014, he talked about completing a segment by segment pipe capacity analysis after doing some field survey work. The Board asked if anyone present at the hearing who knows the status of that work. Mr. Lavoie said that he had not seen anything. He said that they had talked about a maintenance schedule of the existing pipe systems. He said that he has not received that data yet.

The Board said that it would like to have information that shows where the water that used to be a detention pond will go. The Board asked if it will continue to sheet down Linden Street to a catch basin that can handle it. The Board said that in the event of large storms, certain volumes overtop the driveway and flow down into the private drain. The Board questioned what the flow would look like if it could not go down the driveway.

The Board said that it could allow the petition, allow the petition with conditions, or deny the petition. Mr. Himmelberger requested that the Board allow the petition with conditions that address any water on the site. He said that one of the issues that has made this more difficult is that the DPW cannot tell the Applicant how much of the water that is in the drain is coming back from Hunnewell Field because they have not done an adequate job of removing silt at the end pipe and how much is overflowing. He said that DPW stated that it cannot tell how much water is from which source.

The Board said that the question is if you fill in the bowl driveway, what will happen to the water that would have overtopped the driveway and flowed down. The Board asked how the water will flow to other catch basins and other devices that are part of the Town's drainage system. Mr. Lavoie said that a topographical survey could determine that to a point. He said that for a qualitative answer you would not have to look at up gradient. He said that you would look at the topography and see where the water will flow after the catch basin.

The Board said that it would be an additional expense for the homeowners to get professional drainage calculations. The Board said that the topography meets the test in the bylaw. The Board said that the effect of the change in flow of the water in the neighborhood is a legitimate question to ask. The Board

questioned whether it should be DPW or the Proponent answering that question. The Board said that the Proponent did not create that water or set up the systems that direct the water.

The Board said that the topography does not apply to anyone else in the neighborhood. The Board said that another issue is the impacts on other people in the neighborhood. The Board said that because those impacts are not caused by the Proponent, it is hard to burden the Proponent with fixing them. The Board said that it has heard a lot of frustration from the neighbors.

The Board said that when the house was built they put a garage underneath. The Board questioned whether the hardship was self-created. Mr. Himmelberger said that the Knudsons did not build the house. He said that the question is whether the Knudsons as successor owners are entitled to relief. The Board said that the property is entitled to relief not the owner. Mr. Himmelberger said that there is case law that says that a self-created hardship does not run with the land.

The Board said that the petition should be continued until it can get some information from DPW or the Knudson's consultant as to what happens to the water if the Knudsons proceed with their plans.

The Board voted unanimously to continue the hearing to June 5, 2014.

June 5, 2014

Presenting the case at the hearing were David Himmelberger, Esq., Mike Tartamella, Architect, and Jason Lavoie, Engineer.

The Board said that at the previous hearing it had discussed the criteria for granting a variance and the requirement that the Board find that literal enforcement of the Zoning Bylaw would involve substantial hardship, financial or otherwise, due to the shape, topography or soil conditions of the lot, especially affecting this lot but not generally affecting the zoning district in which it is located, that the hardship was not self-created, and that 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.

The Board said that drainage plans were submitted.

Mr. Himmelberger said that at the previous hearing the Board had concerns about the extent to which granting the desirable relief could cause substantial detriment. He said that, based on the materials that have been submitted and a conversation with the Town Engineer, the desired relief may be granted without causing substantial detriment to the public good.

Dave Hickey, Town Engineer, said that he has been involved off and on with this area since coming to work for the Town. He said that there is a history that pre-dates him. He said that what he tried to do in his report was to look at and supply some of the background. He said that it is a challenging watershed. He said that water is trying to get from Route 9 to Hunnewell Field and at some point there is a railroad and a few crossings between that represent a dam or constriction point.

Mr. Hickey said that two things were pertinent in forming his opinion about substantial off-site negative impacts. He said that the Applicant will be filling in some land but will also provide on-site infiltration

RECEIVED
TOWN CLERK'S OFFICE
ELLESMERE MA 02882
JUN 19 P 3:31

that will be the same size as the fill. He said that because the stormwater will infiltrate, it may slightly improve things. He said that the proposal for an increase in house area is offset by a decrease in paved area. He said that he looked at how water will be getting off of the site. He said that what happens on the land will modestly improve things.

Mr. Hickey said that both Linden Street and Geraldine Drive are in sag curves with stormwater struggling to get to Hunnewell Field. He said that water ponds on the street and then fairly quickly thereafter into the driveways at 361 and 319 Linden Street and at 9 Geraldine Drive. He said that, as they looked at the numbers, the Town's drain systems are built to convey a 10-year storm. He said that the numbers indicate that this system passes that. He said that in a 10-year storm, 2.3 acre feet of water will pass through the system with temporary ponding in the driveways. He said that looking at that from 600 feet out, it is insignificant compared to the 2.3 acre feet that is trying to pass through here. He said that he did not think that there will be any increase in flood elevation. He said that he did not think that this could make any off-site flooding better. He said that it is too small in comparison to the 36 acre watershed. He said that he did not think that it will make it worse.

Mr. Hickey said that Hunnewell Field is slightly lower by approximately 2.5 feet and is over 200 feet away. He said that from a drainage standpoint it is close to minimum slopes for conveying water. He said that is a challenge here. He said that, in most cases, water does get conveyed to Hunnewell Field. He said that in extreme events that the system is not designed for, it can be a struggle to convey the water.

The Board said that the current drain that is at the base of the Knudson's driveway is not the low point in the area but is actually at the back of 9 Geraldine Drive. The Board said that what currently happens to the water that ponds in front of 361 Linden Street is that part of it drops down into the catch basin and goes by pipe underground to the catch basin at the back of 9 Geraldine Drive. The Board said that the part that does not go into the catch basin either stays ponded or overflows, goes down the driveway to the existing catch basin and goes by pipe to the catch basin at the back of 9 Geraldine Drive.

The Board said that it heard that when the land is filled at 361 Linden Street, at best, the ponded water will either drop into the catch basin as it currently does or it will back up and flow down Geraldine Drive, either getting into the catch basins on Geraldine Drive and flowing to the same low point on Geraldine or it will flow over the street to the top of the catch basin and will either drop in or flow over and down the drive. The Board said that the runoff for a given storm is a given volume and whether it gets to the lowest point at 9 Geraldine by pipe or by overland is why Mr. Hickey came to the conclusion that there would be no material difference in the ponding. Mr. Hickey said that the volume will not change. He said that as it may temporarily pause at Knudsons offers little in the standpoint of volume or attenuation. The Board said that it is serving as a detention basin. Mr. Hickey said that is not by design or with a lot of substance to it.

The Board said that the proposed changes may change the time at which events occur but 9 Geraldine Drive has a flooding problem and will have flooding problem. The Board said that 361 Linden Street has a flooding problem that will go away if they make the proposed changes.

The Board asked if there is anything that could be done with this permit to help mitigate any adverse effects. The Board asked if there is any long term planning by the town to do anything about this. Mr. Hickey said that he could not think of anything beyond what they are doing on the site. He said that they

are taking the area that seems to have the better soil and creating something that is similar in size to their fill, which is a pretty good offset. He said that it is just too small of a property compared to the overall watershed. He said that it would require DPW having control over several properties to create something of the size that would address the problem. He said that a challenge for the town is that, under most conditions, this is not an issue. He said that the next thing to look at is trying to find a second passage under the railroad tracks to Hunnewell Field. He said that they are active railroad tracks and land takings are not easy things. He said that, although there have been two events in the past year, there are typically 10 events every 40 years. He said that he met with the Pettigrews, Knudsons and Mrs. Spooner and they will try to do some more detailed engineering analysis.

The Board asked if the catch basins are being cleaned out regularly. Mr. Hickey said that the NPDES permit held by the town for stormwater runoff requires that DPW report on those activities. He said that catch basins in Wellesley have to be cleaned on an every other year basis. He said that street sweeping is done on an annual basis and more frequently in commercial areas. He said that leaves are always a challenge because they come in a swath in the fall. He said that they ask residents to help with that. He said that having two major events in an 18 month period caused DPW to video the pipes. He said that it showed that the section under the railroad tracks has an earth bottom which is subject to clogging. He said that they put that on a program to clean out every year. The Board said that there is no real margin in the system. The Board said that if any one link goes wrong, it has magnified impacts.

Graham Ward, 8 Geraldine Drive, said that he is the southerly abutter to the Knudsons. He said that at the last time hearing there was discussion about a calculation for flood volume. He said that he did that calculation. He said that he took the footprint of the house and the footprint of the drive from the garage to the lower retaining wall at the end of the drive, that comes to 233 square feet times 4 feet of water is 9,302 cubic feet, which is 70,000 gallons. He said that Geraldine Drive is 525 feet long, 40 feet wide and has 6 inch curbs. He said that it is 10,500 cubic feet. He said that the flood volume of Knudson's driveway would be 90 percent fill of Geraldine Drive from end to end. He said that was only the water that was sequestered by their driveway inadvertently. He said that does not count the rest of the water. He said that is a lot of water. He said that if water creeps up the street further it could flood another house that drains to the Knudson's backyard. He said that he was not sure if a simple fill of Knudson's driveway will be harmless. He said that if one house gets routinely flooded it is not insignificant.

Mr. Ward said that an alternate to filling the driveway could be construction of a large slow drain reservoir with a capacity for 70,000 gallons, given that storms are increasing. He said that 100,000 gallons would probably be better. He said that the Knudsons have a plan to sequester the water that falls on their property. He suggested that the Town might collaborate with the Knudsons for easements to use the capture point under fill to put a large collection drain that slow feeds out to protect the Knudsons and others on Geraldine Drive. He said that he did not think that the Knudsons should have to pay for that. He said that if they could put the large collection drain in, they may be able to preserve the existing garage.

Mr. Ward said that the proposed garage is large. He said that it has the visual impression of large two-story structure. He said that it gives the impression of increasing the house by a third. He said that it makes it large in character in comparison to many other houses in the neighborhood, most one which only have one-car garages. He said that they are asking for a variance because it grievously violates town setback requirements. He said that even a one-car garage would exceed the setback restrictions. He said

RECEIVED
TOWN OF WELLESLEY
PLANNING DEPARTMENT
2014 JUL 17 P 3:30
WELLESLEY, MA 02182

that the Knudsons do deserve relief from the hardship of flooding. He said that the proposed garage structure neither lessens nor worsens the problem. He said that if the driveway had been filled years ago and flooding was not an issue, the Board would not grant a variance for the garage.

Mr. Ward said that the Knudsons have not garaged their vehicles since they have lived there. He said that they have always parked in their driveway. He said that there are a lot of houses in Wellesley that do not have garages. He said that the plans call for a small office space in the garage, which makes it larger. He said that by sealing off the garage and sealing in the deck area will create more space inside the existing house that could be used. He said that there is an alternative location for a garage on the property within the walls of the existing home at the eastern end. He said that location is well within the setbacks and will not consume open space. He said that it would require a new curb cut. He said that if a garage is needed, a conforming garage is possible.

Mr. Ward said that zoning was adopted in the town to preserve open space, to prevent overly large structures on small lots and to prevent house creep. He said that a 66 percent extension beyond the setback limit is a bit excessive. He said that the Knudsons simply appear to want a larger house. He said that the large garage making the house appear larger is meant to give the impression of a large Wellesley house with a large price tag to assist the Knudsons in recouping some lost investments in the house. He said that if they tried to sell the house right now, they probably could not.

Mr. Ward said that the Board heard evidence that the Knudson children are frightened and the parents are frustrated. He said that whether Knudsons stay or leave, a garage is a barn for vehicles. He said that in this case it will be a very large barn and the Wards will be stuck with their screened porch without the open space that they currently enjoy, looking at the back side of a large barn.

Mr. Ward said that 361 Linden Street does not have topology problem but has a drainage and a size problem. He said that the plot plan shows a large house that fills the lot. He said that the original builder opted for an under house garage because zoning would not permit an attached garage. He said that filling the driveway eases the current flooding problem but does not increase the size of the lot. He asked that the Board deny the petition. He said that the Knudsons are entitled to relief from flooding but are not entitled to a large attached garage that violates setback regulations just because they want it. He said that if the Board does grant the variance, he would like to see three conditions attached, namely, that construction vehicles containing fill or for earth moving work be required to park on the western side of the entrance to Geraldine Drive. He said that when the Knudsons first moved in and were doing landscaping, contractors parked all over the street. He said that Geraldine Drive is on a curve on Linden Street. He said that the sight lines to the east are not good. He said that they would prefer to not have the problem intensified with vehicles parking on that side of the street. He said that it is important that every effort be made to minimize dust arising from the substantial amount of fill that would be required to fill the pit in the yard. He said that this could include dust screens around the perimeter of the work plus frequent water spraying for the fill. He requested that there be a clear demarcation of the property line by a licensed surveyor prior to construction work, with stakes placed every 6 to 8 eight feet and remaining in place throughout the entire construction period. He said that there is a note on the new plans that the Knudsons submitted that talks about a temporary easement for fill. He said that he has not had enough time to review that. He said that, at this time, permission to place fill, to allow worker entrance or egress, or any other construction on the Ward's side of the property line is expressly denied. He said that they

reserve the right to vary the prohibition if adequate information is provided to the Wards in writing that demonstrates a mutual benefit.

Robert Pettigrew, 9 Geraldine Drive, said that his concern about the project is his estimate that he will get twice as much water. He said that Geraldine Drive is like a bath tub. He said that it gets from Upwey Road, Linden Street, and Kirkland Circle. He said that the water builds up on Geraldine Drive and rises. He said that there is a curvature at beginning of his driveway. He said that the water rises 6 to 10 inches and then goes down into his driveway. He said that his concern is that he needs bigger catch basins to slow the water down. He said that if the petition is approved, he will get much more water. He said that they will need to have larger catch basins at the base of Kirkland Circle, Linden Street, and Geraldine Drive. He said that he has a pipe from the beginning to the end of his driveway. He said that in 1994 Logan Huffman tried to put an 18 inch concrete pipe in the driveway. He said that in order to keep the pipe high enough so that it would be above the railroad tracks pipe, it was determined that the 18 inch pipe was too big. He said that an oval corrugated steel pipe was put in at the time, which Mr. Huffman said should be good for 20 years. Mr. Pettigrew said that he was concerned about cars driving over the steel pipe. He said that the pipe could shrink. He said that eventually he would like to asphalt the driveway. He said that he would want a bigger 24 inch pipe on the side of the driveway. He said that there is a need for larger pipes and catch basins.

The Board asked how Mr. Pettigrew's flooding issues are related to the request for a variance for a garage at 361 Linden Street. Mr. Pettigrew said that he will get more water. The Board said that is not what the Town Engineer said. The Board said that the Town Engineer said that the water will get to the Pettigrews either over land or underground with no increase in volume. Mr. Pettigrew said that he will get more water unless there are larger catch basins. He said that is a detriment.

Linda Pettigrew, Geraldine Drive, said that she had heard a lot about the hardship of having water. She said that they have the same hardship that includes not only the driveway but the basement and garage. She said that the water was so powerful from the last storm that it knocked the dryer over in the basement. She said that it was from a door from the garage to the basement that was closed. She said that she heard all kinds of references to the Knudson's driveway acting as a catch basin for the town. She said that the Board is ignoring the situation that is there already and that the Pettigrews do not see a cure for coming out of any plans offered by the Knudsons. The Board said that it is focused on 361 Linden Street because that is the variance before it. Ms. Pettigrew said that they do not see a cure coming out of that. She said that what they do see is a further hardship to the Pettigrews with added water and also the lack of care and reckless abandon with which the Board wants to make 9 Geraldine Drive the catch basin in the town. She said that there are 12 streets between Kingsbury and Rockland Streets that come off of Route 9. She said that there are two streets coming off of Linden Street, Geraldine Drive and Sylvester Terrace. She asked if the Board was going to allow a bigger house with more roof coverage and takes up land that could absorb water and then pass more water onto the Pettigrew's property. She said that she did not think that justified a larger house on the corner of Geraldine Drive.

The Board said that the engineering plans indicate that the Knudsons will not be directing the water from their impervious surface off of their property. Ms. Pettigrew said that they do not like the idea of a house coming so close to Geraldine Drive in the first place. She said that they went along with an increase in the property size on the other side of Geraldine Drive but that does not mean that they support this. She said that they do not want the end of Geraldine Drive boxed in at the end of the street. She said that the

street is 40 feet wide. She said that if it narrower there may have been more surface to take up water flow. She said that construction of the garage with the office space over is a big deal. She said that it would be out of place. She asked if they were supposed to suffer the construction on a lot that does not have the necessary setbacks because somebody wants a garage. She asked if the Board will say that the Pettigrews will be the typical funnel whether they want it or not. She said that the construction does not add a lot to the house. She said that it is not critical living area. She said that the Pettigrews have never finished off their basement. She said that the Knudsons finished off their basement after a previous flood. She said that there are a lot of houses in Newton where people do not live in their basements, especially Newton Highlands. She said that most of the houses in the Highlands get water.

The Board said that under the bylaw and State Statute there are certain criteria that have to be met for a variance including substantial hardship owing to circumstances related to soil, shape or topography. The Board asked if this variance was based on the hardship of topography. Mr. Himmelberger said that it was. The Board asked if the hardship will be eliminated by filling the driveway in. Mr. Himmelberger said that they are seeking to replace an existing two-car garage that floods as a result of the topography that is not across the board for the entire district with another two-car garage. He questioned if topography was addressed by simply filling in land, why topography would ever exist as a criteria for a variance. The Board said that normally when a variance is granted for topography, the site has the same topography pre and post development. Mr. Himmelberger said that this was always the low point in this particular area, not as low as the Pettigrews but always a low point even prior to development. He said that it was not that this was level with Geraldine Drive and they excavated for a two-car under but rather this was a low point in front of the Ward's house which was the original house for the entire subdivision. He said that the subdivision was done in 1968. He said that this was not a dug out area that was created exclusively by this construction. He said that it always was low.

The Board said that by virtue of this project they are eliminating their own hardship. Mr. Himmelberger said that they will be eliminating a topographical hardship which is one of the criteria that they are basing the variance on. Mr. Levy said that is not the typical variance situation with the hardship being eliminated. He said that they will be dealing with the topography in the course of construction. Mr. Himmelberger said that he did not believe that the language of the bylaw speaks to the fact that you have to maintain the topographical issue that is the basis for which you seek relief. He said that it says that literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, owing to circumstances relating to, among other things, topography of such land or structures but not generally affecting the zoning district in which it is located; and the hardship shall not have been self-created; 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. He said that is the basis upon which they are seeking the variance. He said that the comments from the Town Engineer confirm that the desired relief may be granted without substantial detriment to the public good.

A Board member said that he was troubled by the fact that the physical building above grade is being enlarged, although there may be a good distance between this house and the house across Geraldine Drive that was granted relief for the setback. Mr. Himmelberger said that the setback at 353 Linden Street is 11.5 feet. He said that setback was not changed. He said that there was a special permit granted for an addition out back but it did not come any closer than the pre-existing nonconforming structure. He said that the Knudsons proposed structure is 12.1 feet, which creates a distance of 63 feet of open space between the structures over the 40 foot width of Geraldine Drive.

Mr. Himmelberger said that, according to the plan that was submitted pursuant to the subdivision, the low point where the driveway is was Elevation 143 feet. He said that now most of the lowest point is at Elevation 141 with the corner of the drain at Elevation 140. He said that even if it had been built at Elevation 143 feet, it is still 3 feet lower than Linden Street and the water would have still overcrested and come down the driveway and would have flooded. He said that the Engineer's Report indicated that there has been some increase in water runoff over the past two decades due to increased impervious surfaces in that specific watershed as a result of other construction.

The Board said that it had discussed issues concerning the size and location of the proposed addition, impacts on adjacent properties and the use of adjacent land, flooding, what floods and why, including advice from the Town Engineer that it is not a material increase in the water. The Board said that it could conclude from that that there is a not a substantial detriment to the public good on the basis of flooding.

Statement of Facts

The subject property is located at 361 Linden Street, on a corner lot in a 10,000 square foot Single Residence District.

The Petitioner is requesting a Variance pursuant to the provisions of Section XIX and Section XXIV-D of the Zoning Bylaw for construction of a two-car garage with office space above, with less than required front yard setbacks from Geraldine Drive.

A Plot Plan, dated 4/14/14, stamped by Todd P. Chapin, Registered Land Surveyor, Site Development Plan, Sheets 1 and 2, dated 4/14/14, stamped by Kevin P. O'Leary, Professional Engineer, Letter to Zoning Board of Appeals with Recent Correspondence with Town of Wellesley Engineering Division and 2012 and 2013 Flooding Photos attached, dated 4/14/14, from Patrick Ahearn, AIA, Letter to Zoning Board of Appeals, dated 5/7/14, from David Himmelberger, Esq., re: Variance Request for 361 Linden Street, and photographs were submitted.

On May 1, 2014, the Planning Board reviewed the petition and recommended that the petition be deferred until the proponent can prove, by submitting a drainage analysis encompassing the subject properties and abutting properties determined to be within the drainage area, that the proposed project will not exacerbate the potential for flooding on other area properties.

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, especially affecting this land but not generally affecting the zoning district in which it is located; the hardship has not been self-created, and that 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 for construction of a two-car garage with office space above, with less than required front yard setbacks from Geraldine Drive, subject to the following conditions:

1. Parking of construction vehicles shall be on the west side of Geraldine Drive.
2. There shall be staking of the property line.
3. There shall be dust control during construction.

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.

RECEIVED
TOWN CLERK'S OFFICE
MELLESLEY MA 02182
2014 JUN 19 P 3:31

ZBA 2014-30
Petition of Kenneth & Julia Knudson
361 Linden Street

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02482
2014 JUN 19 P 3:31

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

HOUSE ELEVATIONS

EXISTING HOUSE

RIDGE=172.1±
THRESHOLD=148.9±
GARAGE SLAB=140.8±

PROPOSED ADDITION

GARAGE SLAB (BACK)=148.4±
GARAGE SLAB (FRONT)=148.1±

BUILDING COVERAGE

ALLOWED = 2,500± S.F.
EXISTING = 1,410.4± S.F.
PROPOSED = 2,174.9± S.F.

LOT COVERAGE

ALLOWED = 23.5%
EXISTING = 13.2%
PROPOSED = 20.4%

ZONING INFORMATION*

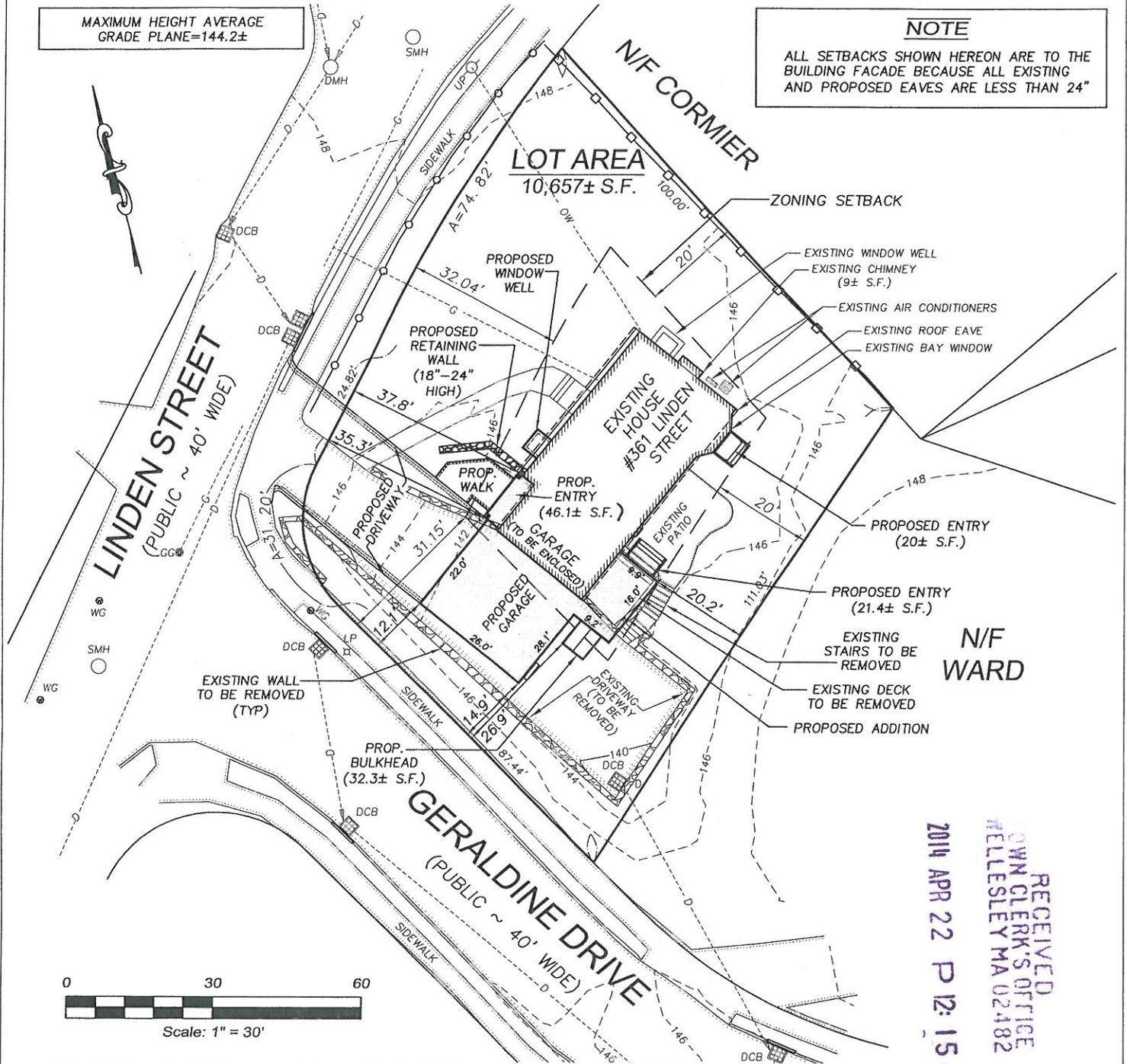
DISTRICT: SINGLE RESIDENCE 10
MIN. 10,000 SF, MIN. 60' FRONTAGE
MINIMUM FRONT YARD DEPTH = 30 FEET*
MINIMUM SIDE YARD DEPTH = 20 FEET
MINIMUM REAR YARD DEPTH = 10 FEET

*CURRENT SETBACK REQUIREMENTS.
SEE ZONING BY-LAWS FOR ADDITIONAL INFORMATION
AND RESTRICTIONS (ie. "500 FOOT RULE").

MAXIMUM HEIGHT AVERAGE
GRADE PLANE=144.2±

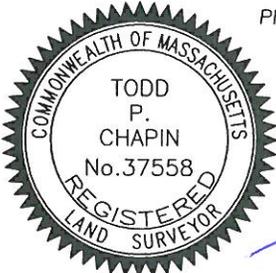
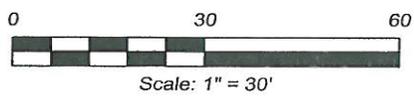
NOTE

ALL SETBACKS SHOWN HEREON ARE TO THE
BUILDING FACADE BECAUSE ALL EXISTING
AND PROPOSED EAVES ARE LESS THAN 24"



N/F
WARD

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02482
2014 APR 22 P 12:15



PREPARED FOR: KENNETH & JULIA KNUDSON
361 LINDEN STREET
WELLESLEY, MA 02481

"BASED ON AN INSTRUMENT SURVEY,
I CERTIFY THAT THE EXISTING BUILDING
IS LOCATED AS SHOWN HEREON."

Todd P. Chapin

"PETITIONER'S PLAN"
LAND IN
WELLESLEY, MASS.

SCALE: 1" = 30'

DATE: 14 APRIL 2014

PREPARED BY: **THE JILLSON COMPANY, INC.**
P.O. BOX 2135
FRAMINGHAM, MA 01703-2135
(508) 485-0500
www.JILLSONCOMPANY.com

JOB #2560