



ZONING BOARD OF APPEALS

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

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ZBA 2014-41
 Petition of Naz Hassenein
 16 Midland Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, June 5, 2014, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of NAZ HASSENEIN requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that construction of a covered walkway and a one-story garage with less than required front yard setbacks on an existing nonconforming structure, on a corner lot in a 10,000 square foot Single Residence District, at 16 MIDLAND ROAD, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On May 19, 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 Joubin Hassenein, (the "Petitioner").

Mr. Hassenein said that the request is for a special permit for relief for a nonconforming structure. He said that the proposal is to extend the nonconforming setback. He said that the required front yard setback to the garage doors is 30 feet. The Board said that the proposed garage will be set back 23.4 feet from Birch Road.

The Board discussed the proposal that, because the walkway attaches the garage to the house, it is one nonconforming structure and therefore eligible for a special permit as opposed to a variance. The Board confirmed that it will be a covered walkway. Mr. Hassenein said that it will be open on the sides but will be covered.

The Board said that the street elevation shows two windows. Mr. Hassenein said that is the family room that is beyond the walkway. He said that is what prevents them from moving the garage back.

The Board confirmed that the one-story garage is just for storage and cars. Mr. Hassenein said that there will be no upper floor in it. The Board asked about attic storage. Mr. Hassenein said that it will be open area with a cupola. He said that there will be a dry wall ceiling on the underside of the roof. He said that the intention was to not use overhead storage. He said that it is just for cars and wall space. The Board said that it frequently adds a condition for no plumbing when it grants relief for garages with high ceilings.

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The Board asked if it is the intent to keep the trees on the adjacent property line to the north. Mr. Hassenein said that they intend to keep those trees for privacy. He said that there is a chance, because of the cut, that the roots may get undermined. He said that the tree canopies are fairly small. He said that they will replant if necessary. The Board asked about the hemlocks on Birch Road. Mr. Hassenein said that they are failing hemlocks. He said that three or four will need to come out. He said that, in order to maintain the side yard setback of 20 feet, it brings the garage a little closer to where their cars are currently parked. He said those trees will be impacted. He said that the adjacent lot has a garage that is three to four feet from the Hassenein's property line and is closer to the road than the proposed garage. The Board confirmed that none of the trees come under the Tree Preservation Bylaw because of their caliper.

Mr. Hassenein said that they are in the process of renovating the basement. He said that the bulkhead is under the basement application that has been approved. He said that, subsequent to that, one of the windows is an egress window. He said that they could eliminate the bulkhead because it is not significant to the basement project. He said that he would have to amend the basement project permit. He said that the egress window is located at the front of the house. He said that it is inside a window well, so it is not visible.

The Board said that the reason that the Planning Staff recommended elimination of the bulkhead was because they asserted that bulkheads are not permitted in front yards. Michael Zehner, Planning Director, said that the plans were reviewed with the Building Inspector. He said that in the definitions of front yard, side yard and rear yard, covered basement entrances not over four feet in height and not over 35 square feet in area are exempt in the side and rear yard areas. He said that the exemption does not extend to front yards. He said that the Planning Department Staff recommended that the Application file an 81X perimeter plan to combine the two lots. He said that they checked the deed and there was a plan from 1905 that established this subdivision. He said that it looks like the most recent deed references that plan but the lots have never actually been combined.

Doug Smith, 8 Midland Road, said that he had reviewed the plans. He said that this will fit in nicely with the neighborhood and will add value to the entire neighborhood. He encouraged the Board to approve the petition.

The Board said that the application for a special permit was predicated on the idea that the walkway connecting the garage to the house makes the garage part of the house and therefore makes the nonconformance on Birch Road continued. The Board asked Mr. Zehner if he knew what the source of that interpretation was. Mr. Zehner said that the Building Inspector considered the covered walkway to be a structure and considered it an extension of the structure. He said that when the Planning Board sees a sizeable addition that proposes to continue an encroachment, it encourages the proponent to set it back. He said that, in this instance, the garage would have to be pushed back another 7.5 feet to comply with the 30 foot front yard setback. Mr. Hassenein said that pushing the garage back will block the family room and back entrance.

Mr. Hassenein said that the lot size is 15,000 square feet with the two lots combined. The Board said that the conclusion that the lot conforms to lot size is predicated on the two lots together. The Board asked about the location of the lot line. The Board said that the site plan that was submitted is missing a lot of information.

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Statement of Facts

The subject property is located at 16 Midland Road, on a 15,000 square foot corner, with a minimum front yard setback from Midland Road of 23.4 feet and a minimum front yard setback from Birch Road of 23.2 feet.

The Petitioner is requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that construction of a covered walkway and a one-story garage with less than required front yard setbacks on an existing nonconforming structure, on a corner lot in a 10,000 square foot Single Residence District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan, dated 9/19/13, stamped by James Troupes, Professional Land Surveyor, and Existing and Proposed Floor Plans & Elevation Drawings, dated 3/29/14, prepared by Wayne A. Rawley Designs Touch were submitted.

On May 30, 2014, the Planning Department Staff reviewed the petition and recommended that the petition be denied.

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 although construction of a covered walkway and a one-story garage with less than required front yard setbacks on an existing nonconforming structure, on a corner lot in a 10,000 square foot Single Residence District is increasing a nonconformity, such increase shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for construction of a covered walkway and a one-story garage with less than required front yard setbacks on an existing nonconforming structure, subject to the following conditions:

1. The bulkhead shall be eliminated.
2. The covered walkway shall not be enclosed.
3. The upper floor of the garage shall not become occupied space.
4. The two lots shall be merged.

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.

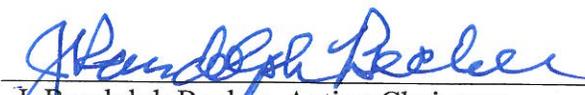
If construction has not commenced, except for good cause, this Special Permit shall expire two years after the date time stamped on this decision.

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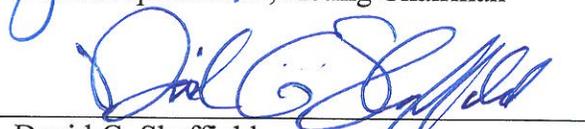
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APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.



J. Randolph Becker, Acting Chairman



David G. Sheffield

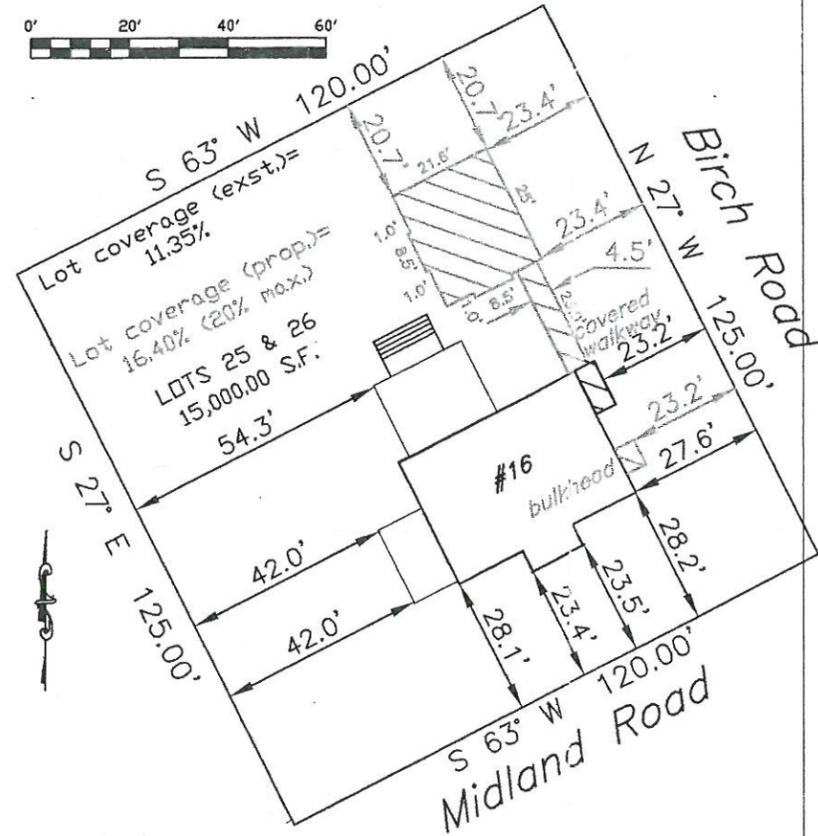


Derek B. Redgate

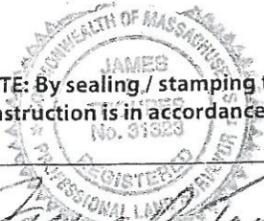
cc: Planning Board
Inspector of Buildings
lrm

SECTION 5 - ZONING COMPLIANCE / CERTIFIED PLOT PLAN

5.1 Certified Plot Plan



NOTE: By sealing / stamping this plot plan, the Registered Land Surveyor certifies that the proposed construction is in accordance with the Town of Wellesley Zoning By-Laws. **+ SPECIAL PERMIT**


 Land Surveyor Signature: James P. George Date: 9-19-2013
 Address: 31 WALCOTT ST. HIGHLAND MA 01748 Telephone: 508-433-6592

FOR ALL BUILDINGS ON THE PROPERTY	
5.2 Lot Area / Coverage	
Lot Area (SF)	15,000
Proposed Lot Coverage (SF)	2460
Proposed Lot Coverage (%)	16.40%
FOR THE BUILDING TO BE CONSTRUCTED OR ALTERED UNDER THIS PERMIT	
5.3 Building Height & Area	
Footprint New Construction (SF)	554.5
Proposed Total Footprint (SF)	2460
Height of Building (FT)	23'-6"
5.4 Living Area	
Gross SF	0
Finished	
Unfinished (GARAGE)	
5.5 Rooms	
Total # Rooms	(GARAGE) (DETACHED) N/A
# Bedrooms	
# Full Bathrooms	
# Half Bathrooms	

For Office Use Only

APPLICATION # _____



RESIDENTIAL BUILDING PERMIT

Property (Number and Street) _____

Date Permit Granted _____

Reviewed By _____

Fees Collected:

- Permit _____
- Microfilming _____
- Advertising _____
- Cert. of Occ. _____

TOTAL \$ _____

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