



## ZONING BOARD OF APPEALS

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ZBA 2014-57  
 Petition of Rona & Amir Dallal &  
 Arie Zinger  
 23 Thomas Road

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Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, July 10, 2014, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of RONA & AMIR DALLAL & ARIE ZINGER requesting a Special Permit/Finding pursuant to the provisions of Section XIVE, Section XVII and Section XXV of the Zoning Bylaw for modification of a previously granted Special Permit, ZBA 2012-58 – Amended, that was granted on August 6, 2012, for demolition of an existing shed and replacement with first floor living space with less than required right side yard setbacks, construction of new first floor living space at the front of the house with less than required left side yard and right side yard setbacks, construction of a new front entry, and construction of a second story addition with less than required left side yard, right side yard and rear yard setbacks, on a 4,891 square foot lot in a Water Supply Protection District and a Single Residence District in which the minimum lot size is 10,000 square feet, at 23 THOMAS ROAD, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On June 23, 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 Samuel Lazarus, Esq., representing Rona and Amir Dallal, and Arie Zinger, (the "Petitioner"). He said that the matter was before the Board almost exactly two years ago. He said that the homes on Thomas Road were originally built in the mid to late 1920's and early 1930's. He said that most of the houses were bungalow style. He said that most of the original homes are nonconforming homes on nonconforming lots. He said that this lot is 4,891 square feet. He said that the side yard and rear yard setbacks are nonconforming. He said that the Board heard from Stanley Brooks, Esq., who previously represented Mr. Lazarus' clients. He said that the Board also heard from Gavin Cockfield, Esq., who represented the Burns, who are the abutters at the rear of the property. He said that the result was a unanimous decision in favor of granting a Special Permit. He said that litigation ensued in the Land Court. He said that, after a period of time, they reached an accommodation with the redesign of the roofline, removal of a couple of windows on the rear second floor, an agreement to use certain building materials on the rear second floor exterior, and a new fence on or at the rear lot line with provisions for maintenance. He said that is part of one of the court orders in Land Court where the case is suspended until matters are resolved with the Zoning Board of Appeals.

Mr. Lazarus said that Kendra Kinscherf, Esq., who is a partner with Mr. Cockfield, has been involved with the case and is present at the Public Hearing.

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Mr. Lazarus said that when the Planning Board reviewed the application they found what they believed to be a problem. He said that at the right rear corner of the house the setback is 17 feet. He said that there is no distance noted at the right front corner of the house. He said that there is a measurement at the right front of the addition at 16.1 feet. He said that the Planning Board questioned how approval was granted as a Special Permit with a further encroachment of approximately one foot.

The Board said that the difference in the front right corner and rear right corner setbacks is probably considerably less than one foot. The Board said that it appears that the dimension is probably closer to 16.1 feet than 17 feet. Mr. Lazarus said that there were other drawings submitted that show that from the right rear corner of the house to the right front corner of the house is 32 feet with the addition of 13 feet for a total of 45 feet. He said that roughly every 15 feet you lose about one third of a foot. He said that it is likely to be closer to 16.4 feet at the front corner of the house.

Mr. Lazarus said that Mr. Brooks made reference to 16 feet in his cover letter to the Board on June 15, 2012. He said that there was also a very brief reference to it during the oral presentation. He said that representation is not contained in the report of the minutes. He said that the Statement of Facts in the decision referenced a minimum right yard setback of 16.1 feet. He said that they originally were coming in for approval of a Special Permit. He asked if the Board feel would require a new design if the difference is three inches. He said that the Petitioner is agreeable to that condition. He said that they would file a new plot plan and construction drawings. He said that he spoke with the Petitioner about stepping in the right side of the addition at the front, similar to how the left side of the addition was stepped in. He said that will break up the look of the face of the house.

The Board said that Mr. Lazarus' calculation assumes that the right side of the house is a flat plane. The Board said that the plot plan shows a bump out at the corner. Mr. Lazarus said that the bump out is for the chimney. He said that on the present drawing the house without the bump out is all on the same plane. He said that it is not symmetrically placed on the lot. He said that the house is tilted at the back.

The Board said that if the Petitioner is willing to modify the design to account for the omission in the plot plan so that there is no doubt that the addition at the front is not increasing the nonconformity, if that was acceptable to the Litigant, that would be acceptable to the Board.

Dorothy Webb, 21 Thomas Road, said that her property is to the right of 23 Thomas Road. She said that she was concerned about the lot being so small and that three of the four setbacks are nonconforming. She said that she was concerned about the size and scope of the proposed addition, although it will be better for the neighborhood. She said that the structures in the neighborhood are quite close. The Board said that the rear abutter was the only one to raise an objection at the original hearing. The Board said that the neighbors thought that it would be better for the neighborhood if there were a slightly larger structure here because it would make it more likely that a family would own it as opposed to it being a rental property. Ms. Webb said that she had heard all of that. She said that she would prefer to have an owner rather than a renter there. She said that she was concerned that the structure not be so large where the setbacks are nonconforming.

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The Board said that, based on the Assessor's record, the total living area of the existing structure is 744 square feet and that is the smallest in the span of 11 through 36 Thomas Road. The Board said that the addition of space will move 23 Thomas Road closer towards the average ratio of the lot size to total living area. The Board said that none of the lots in the span of 11 through 36 Thomas Road meet the lot size requirements. The Board said that they basically break into two groups, one that is approximately 9,900 square feet and one that is approximately 5,000 square feet.

The Board said that the proposed roof style minimizes the bulk as much as possible. The Board said that a flat roof would not be in keeping with the neighborhood. The Board said that the design of the roof tends to visually minimize the two-story structure.

Mr. Lazarus asked if a new plot plan that provides the dimension at the right front corner of the house should be prepared, and that the hearing be continued. The Board said that, to the extent that it is less or greater than 16.1 feet, the Petitioner should considering making an alteration to the addition so that it does not exacerbate the nonconformity. Mr. Lazarus said that he spoke with the Petitioner and they are prepared to make that adjustment. The Board said that if it is one or two inches, it would consider that to be de minimis.

The Board said that it wants to know that the people who brought the case to court are content with the proposed changes. Mr. Lazarus said that he spoke with Ms. Kinscherf about sharing revised plans. He said that if the Burns have any objections, they will raise them appropriately. He said that the general impression is that Mr. and Mrs. Burns are content with the redesign of the roofline and the rear face of the property, in addition to a few other things. He said that they were not as concerned about the front of the house. He said that, as long as the plot plan shows what it needs to show, he did not think that the Burns would come back with any opposition.

The Board said that if there is going to be a redesign, it would like to see it. The Board said that the Petitioner should submit a plot plan that shows the corner dimension and, if necessary, a redesign to not exceed the minimum dimension for the right front corner.

The Board voted unanimously to continue the petition to August 7, 2014.

#### **August 7, 2014**

Presenting the case at the hearing were Arie Zinger, (the "Petitioner") and Alan Goodman, Esq. Mr. Goodman said that he was present at the previous hearing. He said that Attorney Lazarus was unable to attend the hearing tonight.

Mr. Goodman said that a Special Permit was granted in 2012 and an appeal was filed. He said that the differences have since been worked out and amended plans were filed. He said that a question came up at the previous hearing about the distances to the right side lot line. He said that they asked the engineer to do a new plot plan to show the distances from the chimney and the end of the proposed addition to the right side property line. He said that the revised plot plan shows that the proposed addition will encroach .2 feet closer to the side lot line, which is de minimis and should sufficiently address concerns about increasing the nonconformity.

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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 23 Thomas Road, on a 4,891 square foot lot in a Water Supply Protection District and a Single Residence District in which the minimum lot size is 10,000 square feet, with a minimum left side yard setback of 7.1 feet, a minimum right side yard setback of 16.1 feet and a minimum rear yard setback of 9.7 feet.

The Petitioner is requesting modification of a previously granted Special Permit, ZBA 2012-58 – Amended, that was granted on August 6, 2012, that demolition of an existing shed and replacement with first floor living space with less than required right side yard setbacks, construction of new first floor living space at the front of the house with less than required left side yard and right side yard setbacks, construction of a new front entry, and construction of a second story addition with less than required left side yard, right side yard and rear yard setbacks, on a 4,891 square foot lot in a Water Supply Protection District and a Single Residence District in which the minimum lot size is 10,000 square feet, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan, dated 6/5/12, revised 7/8/12, 6/13/14 and 7/21/14, stamped by Frank Iebba, Professional Land Surveyor, Existing Floor Plans & Elevation Drawings, dated 6/10/12, and Proposed Floor Plans & Elevation Drawings, dated 3/3/14, prepared by Peter J. Karb, Architect, photographs, Letter to Zoning Board of Appeals, dated 6/16/14, from Samuel Lazarus, Esq., copies of Application, dated 6/15/12, Letter to Zoning Board of Appeals, dated 6/15/12, from Stanley Brooks, Esq., Letter to Zoning Board of Appeals, dated 7/9/12, from Stanley Brooks, Esq., Plan of Wellesley Gardens, dated 7/27/12, Minutes from 7/1/12 Zoning Board of Appeals Public Hearing and Decision, ZBA 2012-58 – Amended were submitted

On July 8, 2014, the Planning Board reviewed the petition and recommended that the Special Permit 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 modification of a previously granted Special Permit, ZBA 2012-58 – Amended, that was granted on August 6, 2012, that demolition of an existing shed and replacement with first floor living space with less than required right side yard setbacks, construction of new first floor living space at the front of the house with less than required left side yard and right side yard setbacks, construction of a new front entry, and construction of a second story addition with less than required left side yard, right side yard and rear yard setbacks, on a 4,891 square foot lot in a Water Supply Protection District and a Single Residence District in which the minimum lot size is 10,000 square feet is

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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 modification of a previously granted Special Permit, ZBA 2012-58 – Amended, that was granted on August 6, 2012, for demolition of an existing shed and replacement with first floor living space with less than required right side yard setbacks, construction of new first floor living space at the front of the house with less than required left side yard and right side yard setbacks, construction of a new front entry, and construction of a second story addition with less than required left side yard, right side yard and rear yard setbacks, on a 4,891 square foot lot in a Water Supply Protection District and a Single Residence 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 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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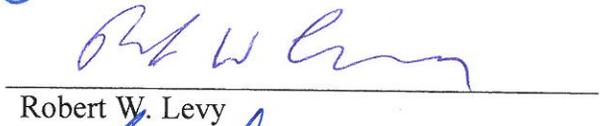
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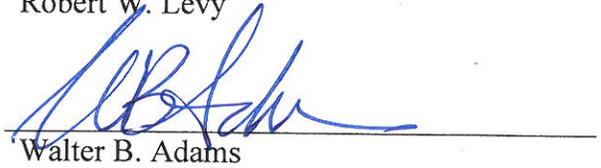
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APPEALS FROM THIS DECISION,  
IF ANY, SHALL BE MADE PURSUANT  
TO GENERAL LAWS, CHAPTER 40A,  
SECTION 17, AND SHALL BE FILED  
WITHIN 20 DAYS AFTER THE DATE  
OF FILING OF THIS DECISION IN THE  
OFFICE OF THE TOWN CLERK.

  
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J. Randolph Becker, Acting Chairman

  
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Robert W. Levy

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

cc: Planning Board  
Inspector of Buildings  
lrm

AREA: 4891 SQ. FT.

EXIST LOT COVER: 22.44 % (1098 SF)  
PROP LOT COVER: 23.57 % (1153 SF)

BUILDING HEIGHT 32' +/-  
FROM PEAK TO GRADE

BUILDING ZONE: SR 10  
MAP 191 PARCEL 82

PROPOSED ADDITION  
23 THOMAS ROAD  
WELLESLEY, MA.

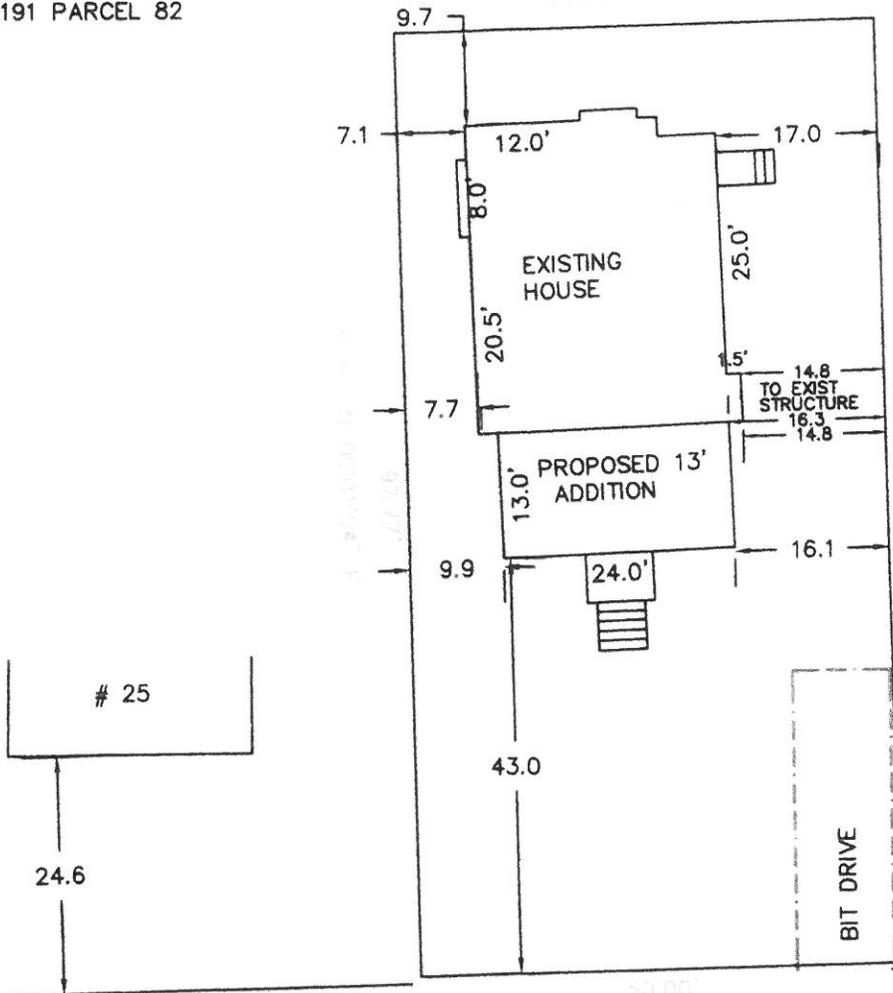
SCALE: 1 IN = 20 FT

JUNE 15, 2012

JULY 8, 2012

JUNE 13, 2014

JULY 21, 2014



THOMAS ROAD



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