



ZONING BOARD OF APPEALS

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 web: www.wellesleyma.gov

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ZBA 2014-06

Petition of Eugene Giller & Raisa Milkin
 26 Pickerel Road

TOWN'S OFFICE
 WELLESLEY MA 02482
 FEB 20 P 2:37

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, February 6, 2014, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of EUGENE GILLER & RAISA MILKIN requesting modification of a Variance and a Special Permit/Finding pursuant to the provisions of Section XIVE, Section XVII, Section XIX, Section XXIV, and Section XXV of the Zoning Bylaw that construction of a second story addition over an existing nonconforming structure with less than required right side yard setbacks, at 26 PICKEREL ROAD, in a 10,000 square foot Single Residence Water Supply Protection District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On January 21, 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 Eugene Giller and Raisa Milkin, (the "Petitioner"). Mr. Giller said that the house is located on a 17, 239 square foot lot in a 10,000 square foot Single Residence District. He said that the right side setback is 15 feet instead of the required 20 feet.

Mr. Gilkin said that most of the second floor space is not habitable, according to MA Building Code. He said that the Code requires that at least 50 percent of the area has a height of at least 7 feet. He said that the rest of the living area should be 5 feet or higher. He said that most of the area on the second floor is significantly below 7 feet. He said that the knee walls are only 3 feet high.

Mr. Giller said that the house does not accommodate their needs. He said that they have elderly parents who have to have separate rooms. He said that his father-in-law needs to be hooked up to a positive pressure machine at night. He said that the device is very loud.

The Board said that the building is shown with a right side yard setback of 15.15 feet on the original plot plan and as 15 feet on the new plot plan.

The Board said that it is a large lot of land for being so close to Morses Pond. The Board said that the original plot plan shows a total area of 10,606 square feet and the new plot plan shows that as 17, 239 square feet. The Board said that it appears that the 10,606 square feet is the land behind the water line.

The Board said that there is an existing Variance for part of the second floor. Mr. Giller said the second floor area is not livable. He said that he cannot walk through it.

The Board said that Plan A-3 shows a height from the dashed line of 35 feet 8 inches. The Board said that looking at the dashed line in other views, even though the line is unlabeled, one might interpret that as being average grade. The Board said that it was not clear whether that is what was covered by the Variance or whether that is new. The Board said that the Variance decision only talked in terms of raising the roof approximately 10 feet.

The Board said that the property is located on a peninsula that sticks out into Morses Pond. The Board said that on either side of the peninsula the houses face Morses Pond. The Board questioned if any of the houses sit on what would be called buildable lots today or have side yards that meet the current Zoning Bylaw. The Board said that these houses were originally built as summer cottages for Bostonians.

The Board said that it is not clear on the Building Permits that the construction that was authorized by the Variance was ever built. The Board said that the first Building Permit after 1988 is 1991 and that was for a family room addition, not an increase in the height. The Board said that it could have been a family room addition that had an increase in the height but there is no way to tell.

Mr. Giller said that most of the neighboring houses were granted Variances. He said that the proposed construction will stay within the existing footprint. He said that the interior will be gutted. He said that there have three additions done at different times. He said that the house was put together piecemeal. The Board confirmed that the exterior walls will not be taken down.

The Board discussed the Planning Board's comment about increasing the nonconformity. The Board said that the nonconformity will be increased by adding a second floor over the whole structure. The Board said that it can grant a Special Permit to increase a nonconformity so long as it makes a finding that the proposed structure will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

The Board said that the adjacent house facing on the right side is almost a full story above because of the topography. The Board said that the addition of a second story on this property will not really encroach on the neighbor. The Board said that the houses across the street have second stories but they face a different part of the pond.

Kara Kressy, 29 Pickerel Road, said that she supports the proposed project. She said that she was glad to see plans for improving the neighborhood. She said that it is an island and everyone has a view. She said that there are no issues with being able to see the water.

Ms. Kressy said that she did not know if there is a house on the street that is conforming. She said that the house at 4 Pickerel Road is approximately 10 feet from the street.

Ms. Kressy said that the side of the house that is nonconforming is the side that has the second floor.

Ms. Kressy said that because they are forced to stay within the existing footprint, the front elevation appears to be very flat. She confirmed that overhangs can be no more than two feet. She asked if the Petitioner could add an entry porch that is less than 50 square feet at the front of the structure without it counting towards the TLAG (total living area plus garage). The Board said that they can add a 50 square

foot front entry without Wetlands Protection approval. The Board said that the Wetlands Protection Committee should have issued a letter saying that the property is not governed by Wetlands Protection Regulations. The Board said that the committee no longer issues those letters even though the State Statute says that they should. The Board said that any excavation work would be another issue.

The Board said that it had concerns about the construction process. The Board said that it is a very restricted access road and the neighbors will be highly impacted by the construction workers' parking. Ms. Milkin said that there is a circular drive there for five cars. The Board said that the Petitioners may have to allow parking along the frontage of the property as well. The Board said that public safety is an issue for all of the neighbors. Mr. Giller said that they will make sure that none of the construction workers park on Pickerel Road. Ms. Kressy said that there is space to park at the bottom of the hill.

Statement of Facts

The subject property is located at 26 Pickerel Road, in a 10,000 square foot Single Residence Water Supply Protection District, with a minimum right side yard setback of 15 feet.

The Petitioner is requesting modification of a Variance and a Special Permit/Finding pursuant to the provisions of Section XIVE, Section XVII, Section XIX, Section XXIV, and Section XXV of the Zoning Bylaw that construction of a second story addition over an existing nonconforming structure with less than required right side yard setbacks, in a Water Supply Protection District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan dated 1/12/14, stamped by Frank Iebba, Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 1/12/14, prepared by RAV & Assoc., Inc., and photographs were submitted.

On February 4, 2014, the Planning Board reviewed the petition and recommended that modification of the Variance and 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, to the extent this Special Permit is modifying a Variance that it will be deemed a modification of the existing Variance, granted on August 5, 1988 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 this Zoning Bylaw.

The Board is of the opinion that modification of a previously granted Variance, ZBA 88-62, may be granted to allow construction of a second story addition over an existing nonconforming structure with less than required right side yard setbacks, in a Water Supply Protection District, as it was determined by a previous Board in 1988 that a hardship existed.

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TOWN'S OFFICE
CITY OF MAADONNA MI 482

It is the opinion of this Authority that although construction of a second story addition over an existing nonconforming structure with less than required right side yard setbacks, in a Water Supply Protection District is increasing a nonconformity, such increase shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Therefore, modification of the Variance, ZBA 88-62, and a Special Permit are granted, as voted unanimously by this Authority at the Public Hearing, for construction of a second story addition over an existing nonconforming structure with less than required right side yard setbacks, in a Water Supply Protection District, subject to the condition:

- All efforts shall be made to mitigate construction traffic and obstruction to the public way.

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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INSPECTOR'S OFFICE
EUGENE MA 02482

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SLEY MA 02482

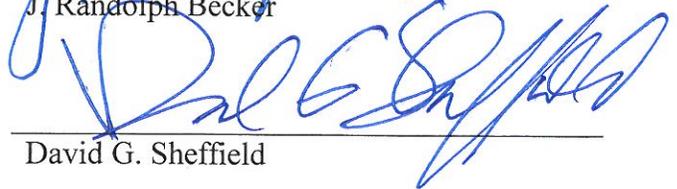
APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.



Richard L. Seegel, Chairman

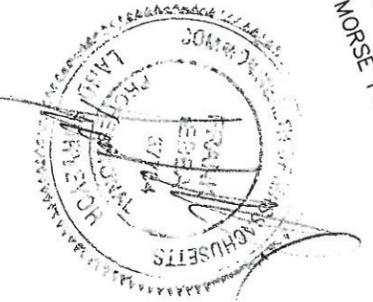
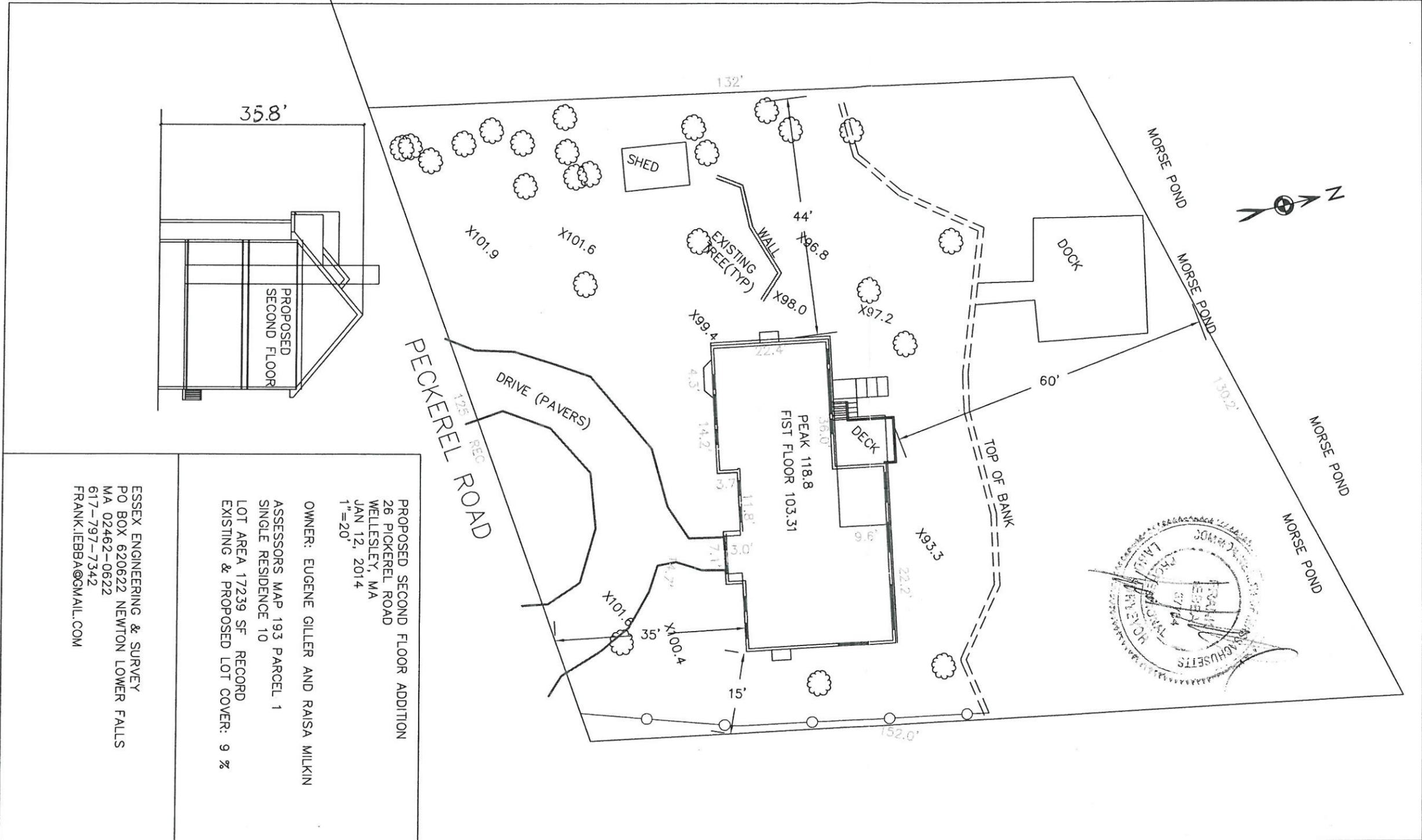


J. Randolph Becker



David G. Sheffield

cc: Planning Board
Inspector of Buildings
lrm



PROPOSED SECOND FLOOR ADDITION
 26 PICKEREL ROAD
 WELLESLEY, MA
 JAN 12, 2014
 1"=20'
 OWNER: EUGENE GILLER AND RAISA MILKIN
 ASSESSORS MAP 193 PARCEL 1
 SINGLE RESIDENCE 10
 LOT AREA 17239 SF RECORD
 EXISTING & PROPOSED LOT COVER: 9 %

ESSEX ENGINEERING & SURVEY
 PO BOX 620622 NEWTON LOWER FALLS
 MA 02462-0622
 617-797-7342
 FRANK.IEBBA@GMAIL.COM

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 SURVEYOR'S OFFICE