



ZONING BOARD OF APPEALS

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

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ZBA 2014-89
 Petition of Nadeem Sarwar
 65 Donizetti Street

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Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, October 9, 2014, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of NADEEM SARWAR requesting Modification of a Variance ZBA 40-11, that was granted on October 29, 1940, for a second story addition on an existing structure with less than required left side yard and right side yard setbacks, Modification of a Variance ZBA 46-6, that was granted on June 4, 1946, for a second story addition on an existing structure with less than required right side yard setbacks, and a new Variance for construction of a two-story structure with less than required right side yard setbacks and a side facing garage with less than 30 feet from the garage entrance to the left side lot line, pursuant to the provisions of Section XIX and Section XXIV of the Zoning Bylaw, at 65 DONIZETTI STREET, in a 10,000 square Single Residence District.

On September 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 were David Himmelberger, Esq. Charles Kraus, Architect and Nadeem Sarwar, (the Petitioner).

Mr. Himmelberger said that the request is for modification of a variance to extend the rear of the structure and raise the structure from one and one-half to two stories. He said that this property was previously granted two variances. He said that the variance in 1940 permitted construction of the home. He said that the variance was granted based on the shape of the lot, in that it was a narrow rectangle. He said that the 1946 variance allowed for a one-car garage to be attached to the rear of the existing home and located no closer than 15 feet to the lot line. He said that the Petitioner is seeking a modification of the variance for the existing garage to be filled in and for a proposed two bay garage at the same dimensional setbacks with a second story over it and a half story built over the front of the house. He said that the lot is 63 feet wide and the Board has previously looked at modifications of variances and applied a quasi-special permit analysis to it, namely does the modification intensify any nonconformities and, if so, are they not substantially more detrimental to the neighborhood. He said that this is a somewhat gray area of law. He asked that the relief be granted under that standard.

The Board confirmed that the request is to modify a variance, not grant a new variance. Mr. Himmelberger said that the request is to modify the 1946 variance by extending the garage, keeping it at the same dimensional setbacks. The Board said that the 1946 variance allowed construction of the garage within 15 feet of the side lot line. The Board said that the Plot Plan shows that the garage was constructed

with a 14.5 foot setback. The Board said that the existing garage does not comply with the variance. The Board said that instrumentation has improved. A Board member said that his understanding of the law is that a variance does not morph into a nonconforming use, which would be the special permit standard. He said that it is a variance standard, not a special permit standard. He said that he was troubled with the non compliance with the 1946 variance. He said that it is beyond the statute of limitations and cannot be ordered to be removed. Mr. Himmelberger said that, in the course of construction, they would be happy to bring that into conformity.

The Board said that the Plot Plan does not show the dimension from the face of the garage to the lot line on the northwest. Mr. Kraus said that dimension is 25.8 feet. He said that they stepped it back another six inches to bring it to 26.3 feet. The Board said that the bylaw requirement is 30 feet. The Board said that recapturing six inches from the southeast side to conform with the variance will require subtraction from the setback on the northwest side. The Board said that the existing garage is at 20.8 feet. Mr. Himmelberger said that, if the Board requires that the six inches be conceded, the Petitioner would be willing to do that. The Board said that the statute of limitations has run out and the Board cannot make the Petitioner change the setback on the existing garage. The Board said that the existing garage is a side facing garage.

The Board said that the width of the property is 62 feet.

Mr. Himmelberger asked about bringing the southeast side to 15 feet while extending the existing setback on the northwest side. The Board said that revised plans should be submitted that show that the dimensions that were approved by the Board are met.

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 65 Donizetti Street, in a 10,000 square foot Single Residence District, with a minimum left side yard setback of 17.9 feet and a minimum right side yard setback of 14.5 feet.

The Petitioner is requesting Modification of a Variance ZBA 40-11, that was granted on October 29, 1940, for a second story addition on an existing structure with less than required left side yard and right side yard setbacks, Modification of a Variance ZBA 46-6, that was granted on June 4, 1946, for a second story addition on an existing structure with less than required right side yard setbacks, and a new Variance for construction of a two-story structure with less than required right side yard setbacks and a side facing garage with less than 30 feet from the garage entrance to the left side lot line, pursuant to the provisions of Section XIX and Section XXIV of the Zoning Bylaw, in a 10,000 square Single Residence District.

A Plot Plan, dated 8/8/14, stamped by Mark E. Violette on 8/12/14, Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 8/12/14, prepared by Kraus Associates, and photographs were submitted.

On October 7, 2014, the Planning Board reviewed the petition and recommended that the petition be denied.

Decision

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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.

The Board is of the opinion that modification of a previously granted Variance, ZBA 40-11, may be granted to allow for a second story addition on an existing structure with less than required left side yard and right side yard setbacks, as it was determined by a previous Board in 1940 that a hardship existed.

Therefore, the requested modification of Variance, ZBA 40-11, pursuant to the provisions of Section XIX and Section XXIV-D of the Zoning Bylaw is granted to allow for a second story addition on an existing structure with less than required left side yard and right side yard setbacks.

The Board is of the opinion that modification of a previously granted Variance, ZBA 46-6 may be granted to allow for a second story addition on an existing structure with less than required right side yard setbacks, and construction of a side facing garage with a partial second story with less than 30 feet from the garage entrance to the left side lot line and less than required right side yard setbacks, as it was determined by a previous Board in 1946 that a hardship existed.

Therefore, the requested modification of Variance, ZBA 46-6, pursuant to the provisions of Section XIX and Section XXIV-D of the Zoning Bylaw is granted to allow for a second story addition on an existing structure with less than required right side yard setbacks and construction of a side facing garage with a partial second story with less than 30 feet from the garage entrance to the left side lot line and less than required right side yard setbacks, subject to the following conditions:

1. The setback of not less than 15 feet shall be brought into conformance with the 1946 Variance.
2. The northwest setback shall not be any closer to the lot line than the existing garage.

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 modification of a variance shall expire one year after the date time stamped on this decision.

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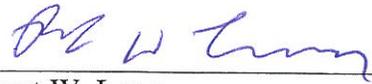
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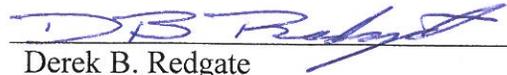
APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.



David G. Sheffield, Acting Chairman

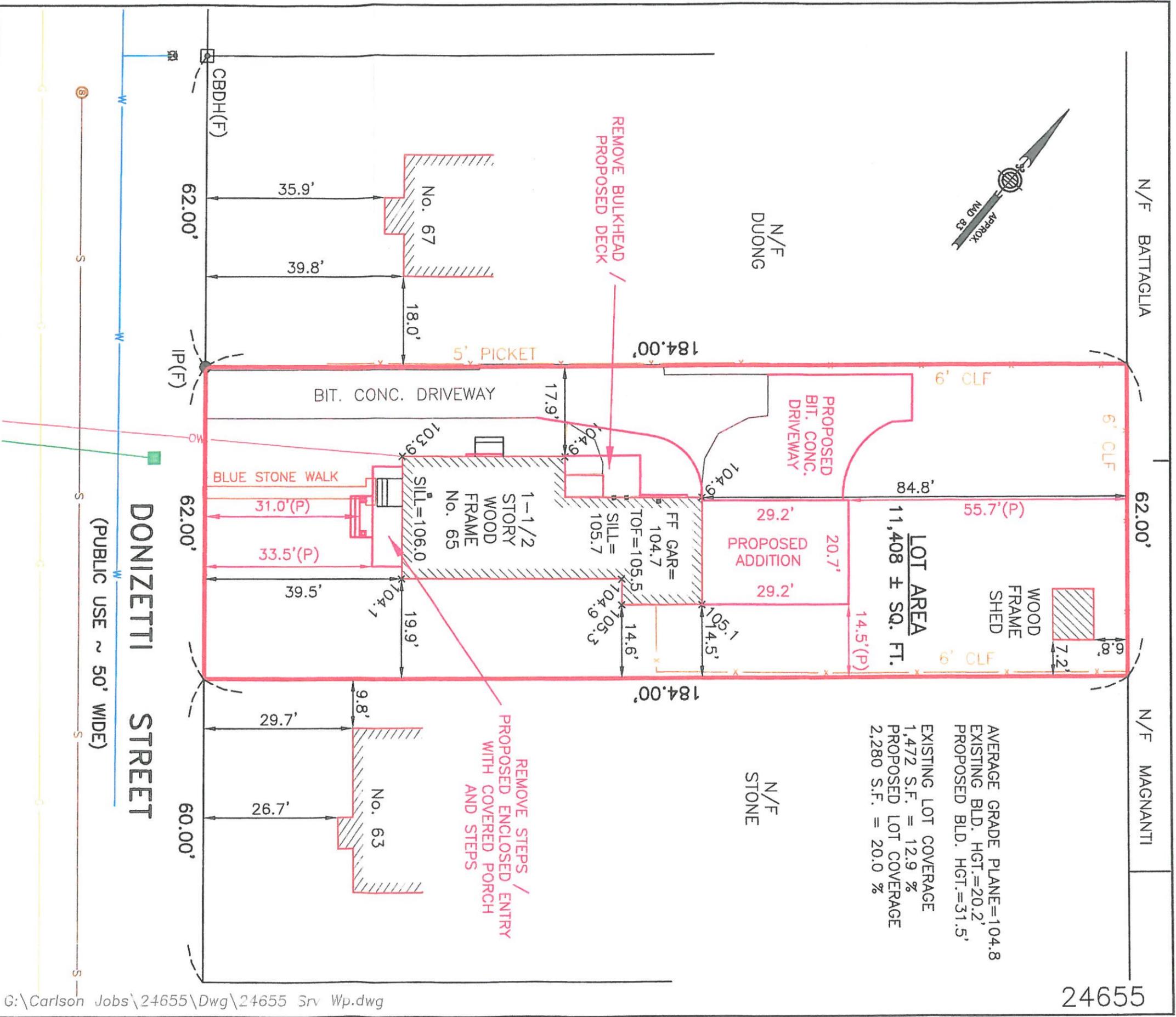


Robert W. Levy



Derek B. Redgate

cc: Planning Board
Inspector of Buildings
lrm



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IN MY PROFESSIONAL OPINION, I CERTIFY TO KRAUSS ASSOCIATES AND THE TOWN OF WELLESLEY BUILDING INSPECTOR THAT, AS A RESULT OF A SURVEY MADE ON THE GROUND TO THE NORMAL STANDARD OF CARE OF PROFESSIONAL LAND SURVEYORS PRACTICING IN MASSACHUSETTS, I FIND THAT THE STRUCTURE FALLS WITHIN FLOOD ZONE "X" UNSHADED AS SHOWN ON THE F.I.R.M. MAP PANEL # 25021-C0016E, DATED: JULY 17, 2012 AND THAT THE LOCATION OF THE EXISTING AND PROPOSED STRUCTURES ARE AS SHOWN HEREON.

Mark E. Violette
PROFESSIONAL LAND SURVEYOR
DATE: 8/12/14



PLOT PLAN OF LAND
65 DONIZETTI STREET
WELLESLEY, MASS.
PREPARED FOR: KRAUSS ASSOCIATES
SCALE: 1"=20' DATE: AUGUST 8, 2014

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Deed Recorded at Norfolk Registry of Deeds
Book 30928, Page 185
Plan 391 of 1975
Assessors Map 110, Parcel 66
Zoning District: Single Residence SR-10 24655