



ZONING BOARD OF APPEALS

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

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ZBA 2016-40
 Petition of James & Gerald Rutledge
 7 Bemis Road

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Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, June 2, 2016, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of James & Gerald Rutledge requesting a Variance pursuant to the provisions of Section XIX and Section XXIV-D of the Zoning Bylaw for relief from the requirements for Build Factor, Frontage and Front Yard, on an existing lot with less than required frontage and front yard, at 7 Bemis Road, in a 10,000 square foot Single Residence District.

On May 16, 2016, 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 Luke Legere, Esq., James and Gerald Rutledge, (the Petitioner).

Mr. Legere said that the request is for variances for the build factor, frontage and front yard requirements. He said that they are asking this Board to come to the same conclusion as a Board did in 1968 when it granted a variance to John and Mary Rutledge, who are James and Gerald's parents, for frontage and front yard requirements. He said that the previous variance pre-dated the build factor requirement in the Zoning Bylaw (ZBL).

Mr. Legere said that the 7 Bemis Road property satisfies the criteria for granting a variance. He said that the unique pan handled shape of the lot is the root of all of the nonconformities. He said that access to Bemis Road is via a 10 foot passageway. He said that passageway has been the primary access for the 70 years that the Rutledge family has owned the property and for many years prior to that.

Mr. Legere said that granting the variances would not be detrimental to the public good and would not derogate from the intent or purpose of the bylaw. He said that they submitted a letter from Fire Chief DeLorie, who indicated that he visited the property in February and determined that granting the variances would not negatively impact the Fire Department's ability to respond to 7 Bemis Road in an emergency.

Mr. Legere said that there will not be any change or impact to the neighborhood.

Mr. Legere said that the Rutledges would be negatively impacted if the variances are denied. He said that the family has always treated this property as two parcels. He said that the deed conveying the land to John and Mary Rutledge in 1945 references multiple parcels. He said that they bought approximately 3,000 square feet from a neighboring property in 1968 to bring each of these lots up to the minimum of 10,000 square feet. He said that they were granted a variance for frontage and front yard requirements in

1968 and recorded the decision a year later. He said that they conveyed the 19 Seaward lot to their sons at the same time, in reliance on that variance. He said that approximately 20 years later, the 7 Bemis Road lot was conveyed to the sons.

Mr. Legere said that the Town of Wellesley has treated these as two separate lots for several decades. He said that the materials that were submitted included Assessors Records that show that the lots have been taxed separately since 1996. He said that he believes that the lots began being taxed shortly after the variance was granted in 1968 or 1969. He said that the Rutledges and the Town have treated the lots as two separate parcels.

Mr. Legere said that if the variance is denied, the Rutledges will be negatively affected because they will be left with a nonconforming lot that cannot not be built on, which would be hard to market and possibly unsellable.

The Board confirmed that there is a curb cut at 7 Bemis Road. James Rutledge said that there is no curb there. The Board asked if the crux of this matter is the Building Inspector's opinion that not acting on the variance in 1968 made it null and void. Mr. Legere said that one avenue would have been to challenge that determination, but in the interest of efficiency they decided to go ahead with the variance petitions. He said that if the Building Inspector agreed with the Petitioner that the 1968 variance was still valid and that the Build Factor does not apply, the Petitioner would not need to come before this Board.

A Board member said that Mr. Leger stated in his brief that the Rutledge family treats the two properties as two separate lots. He asked what the basis is for that statement. Mr. Legere said that from a legal perspective, the variance was recorded at the Registry of Deeds and the lots were conveyed separately, almost 20 years apart. He said that the Seaward Road parcel has never been used as access to 7 Bemis Road. He said that there are hedges and natural barriers between the two parcels. James Rutledge said that they are adjoining lots but they have always thought of them as separate lots. He said that they have been taxed on them as two separate lots. He said that shrubs divide the lots.

The Chairman said that the requirements for a variance in 1968 are not the same as they are today. He said that the Petitioner identified lot shape as one of the criteria for granting a variance. He said that the express purpose of the build factor is to control the shape of the lot versus the area. He questioned how the Board can grant a variance based on the shape of the lot when the build factor is inherently trying to control the shape of the lot. Mr. Legere said that may be a reason to grant a variance because it is something that this lot is incapable of complying with. He said that the reason for that is the access out to Bemis Road that pre-dates that provision of the bylaw. He said that the unique shape of the lot satisfies the first of the criteria and because of the unique shape that was in existence long before the Build Factor provision of the bylaw, it is impossible for this lot to comply.

A Board member asked about the process that the Petitioner went through with the Planning Board. He asked what the lots were prior to the application for ANR and what they are now. Mr. Legere said that two separate approvals are needed, one is a variance from ZBA under the bylaw, and the second is approval under State regulations for subdivision. He said that they received endorsement for ANR from the Planning Department earlier this year. He said that in 1968 the ZBA was the first Board to have this come before them. He said that ZBA granted the necessary variances. He said that the Planning Board subsequently denied the Subdivision Control Law approval that the Petitioner was recently approved for.

A Board member said that he has less issue with the front yard and frontage issues. He said that he was struggling with the build factor issue. Mr. Legere said that in a typical situation, someone carves off and creates a pork chop lot, which would be a self-created situation. He said that the access that is at the root of this problem was not created by the Applicant. He said that it has been there for many decades.

A Board member said that with the action of granting a variance, it creates frontage and a front yard that does not fit neatly into the definition in the bylaw. He said that a developer could get closer to the Bemis Road lot line and argue that he has a 90 foot front yard. Mr. Legere said that a possible remedy would be to condition the variance on house location.

A Board member said that if the lot was truly legally recorded in 1968, that would pre-date the build factor requirement in the ZBL. He said that since that is what is at issue, it is not clear how a change to the ZBL that happened after that date applies.

A Board member said that the crux of the matter is whether the split of the lot was legally recorded in 1969. He said that is not something that is proper for the Board to decide. Mr. Legere said that is why the Petitioner is asking for a variance. He said that the lot does not meet the build factor and they are not challenging that the build factor applies. He said that the portion of the property that causes the lot to run afoul of the build factor has been in existence for many years and pre-dates the Rutledge's ownership. He said that the Rutledges did not bring this upon themselves. He said that this is the shape that they purchased and was probably in place before Zoning was enacted at all, but certainly before the build factor provision was written into the bylaw. He said that for those reasons, a variance would be appropriate.

A Board member said that the build factor requirement was most likely put into place to control new development so that odd shaped new lots are not created. He said that this lot existed prior to that. Mr. Legere said that this is a unique lot and has not been created recently. He said that it certainly pre-dates the build factor requirement and possibly the Zoning Bylaw entirely. He said that a variance would be appropriate.

The Board said that granting a variance for this will not create precedence

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 7 Bemis Road, on a 10,150 square foot lot, in a 10,000 square foot Single Residence District, with minimum frontage and front yard width of 10 feet.

The Petitioner is requesting a Variance pursuant to the provisions of Section XIX and Section XXIV-D of the Zoning Bylaw for relief from the requirements for Build Factor, Frontage and Front Yard, on an existing lot with less than required frontage and front yard.

Plan of Land, dated 2/23/16, stamped by Elliott J. Paturzo, Professional Land Surveyor, Letter to Richard L. Seegel, Chairman, Wellesley ZBA, dated 4/13/16, from Luke H. Legere, Esq., and Letter with attached

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exhibits to Michael T. Grant, Inspector of Buildings and Zoning Enforcement Officer, Wellesley Building Department, dated 3/29/16, from Luke H. Legere, Esq., were submitted.

On March 10, 2016, Michael T. Grant, Inspector of Buildings and Zoning Enforcement Officer, sent an Advisory Opinion letter to Mr. Luke Legere.

On May 31, 2016, the Planning Department Staff reviewed the petition and recommended that the variance be granted.

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 for Build Factor, Frontage and Front Yard would involve substantial hardship, financial or otherwise, to the Petitioner owing to circumstances relating to the shape of the lot, especially affecting such land or structures but not generally the zoning district in which it is located, the hardship has not 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.

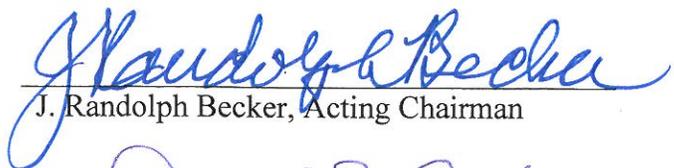
Therefore, the requested Variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw is granted for relief from the requirements for Build Factor, Frontage and Front Yard, in accordance with the submitted plans.

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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

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FOR REGISTER USE ONLY

LEGEND

- B.F. BUILD FACTOR
- CBDHF CONCRETE BOUND DRILL HOLE FOUND
- CBXF CONCRETE BOUND X-CUT FOUND
- IPF IRON PIPE FOUND
- IRF IRON ROD FOUND
- SBDHF STONE BOUND DRILL HOLE FOUND

PLAN REFERENCE

- PL.BK. 589 - PL.NO. 55
- PL.BK. 437 - PL.NO. 193
- PL.BK. 405 - PL.NO. 212
- PL.BK. 355 - PL.NO. 1082
- PL.BK. 357 - PL.NO. 989

- PL.NO. 975 OF 1968
- PL.NO. 417 OF 1968
- PL.NO. 402 OF 1957
- PL.NO. 312 OF 1944
- PL.NO. 252 OF 1944
- PL.NO. 152 OF 1931

PLAN IN BK. 1680 - PG. END
PLAN IN BK. 1629 - PG. 51

NOTES:

PLAN IS PREPARED TO SHOW THE EXISTING PROPERTY LINES AS SHOWN ON PLAN RECORDED AT THE NORFOLK REGISTRY OF DEEDS PLAN NUMBER 975 OF 1968 IN BOOK 4641 PAGE 29

PURPOSE OF THIS PLAN IS TO FORMALLY COMPLETE SUBDIVISION OF THE LOTS AT 7 BEMIS ROAD AND 19 SEAWARD ROAD.

SEE ZBA VARIANCE APPROVAL BK. 4841 - PG. 28

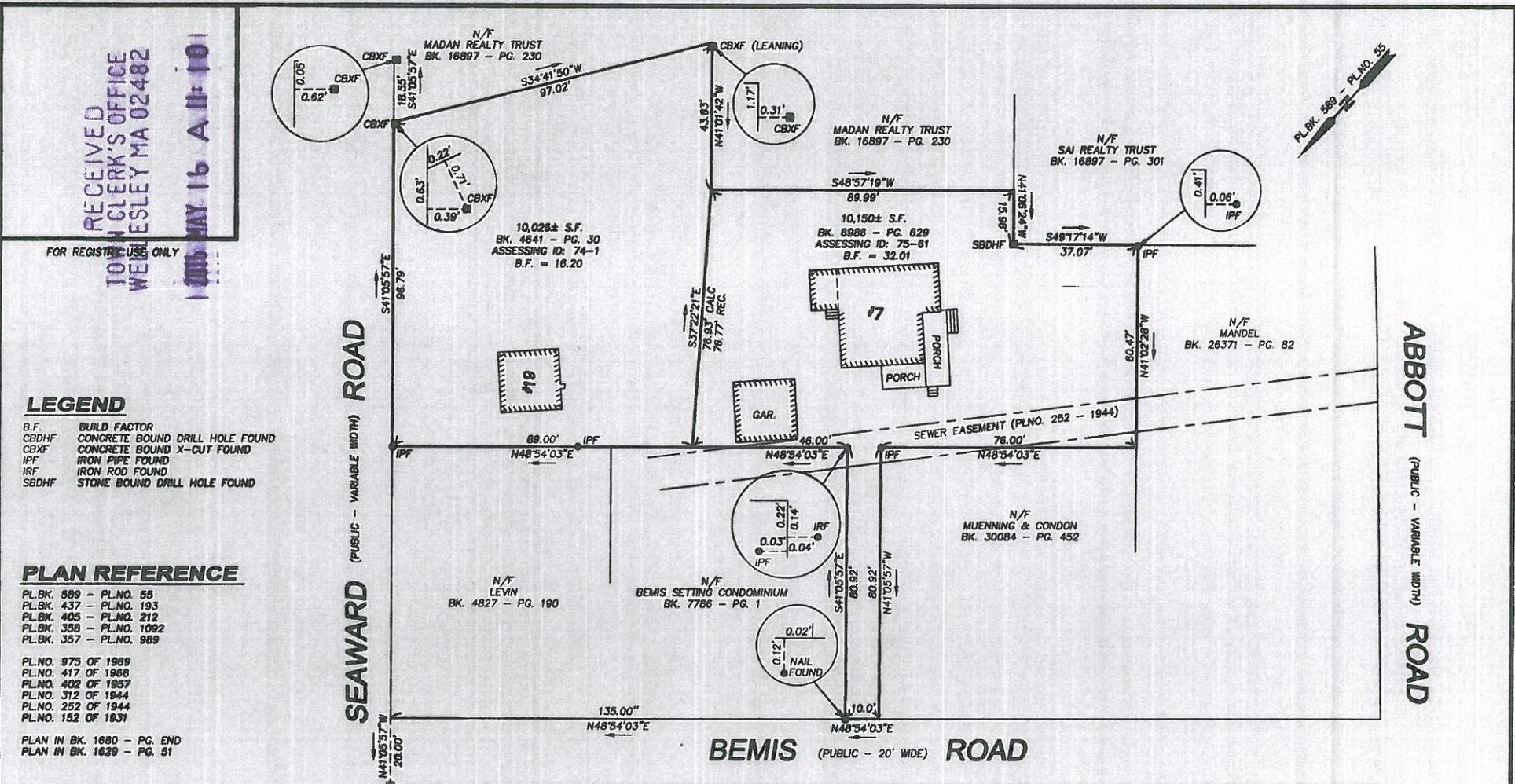
ZONING DISTRICT: SR-10

APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED

[Signature]
[Signature]
[Signature]
WELLESLEY PLANNING BOARD
DATE: 3/21/2016

THE ABOVE ENDORSEMENT IS NOT A DETERMINATION BY THE PLANNING BOARD AS TO CONFORMANCE WITH ZONING REQUIREMENTS

I CERTIFY THIS PLAN CONFORMS TO THE RULES AND REGULATIONS OF THE REGISTRY OF DEEDS.



PLAN OF LAND

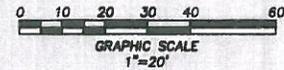
FOR 7 BEMIS ROAD AND 19 SEAWARD ROAD
IN

WELLESLEY,

MASS.

SCALE: 1IN=20FT
FEB 23, 2016

CHENEY ENG. CO., INC.
NEEDHAM, MASS.



OWNERS OF RECORD:
7 BEMIS ROAD = DAVID RUTLEDGE, JAMES RUTLEDGE AND GERALD RUTLEDGE
19 SEAWARD ROAD = DAVID RUTLEDGE, JAMES E. RUTLEDGE AND GERALD J. RUTLEDGE