



ZONING BOARD OF APPEALS

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

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ZBA 2016-05
 Petition of Michael Mabardy
 55 Atwood Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, January 7, 2016, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Michael Mabardy requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that demolition of existing stairs and construction of a deck and a concrete slab underneath for air conditioning units with less than required front yard setbacks to State Street shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The Petitioner is requesting a Special Permit pursuant to the provisions of Section XIVB and Section XXV of the Zoning Bylaw for construction of a deck and a concrete slab underneath for air conditioning units in a Flood Plain District. The existing structure is located on a corner lot at 55 Atwood Street, in a 10,000 square foot Single Residence District, with less than required front yard setbacks to Atwood Street and State Street.

On December 21, 2015, 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 James Morse, who said that he has a P & S Agreement on the property. He said that the plan is to renovate the property. He said that it is a stucco colonial. He said that the request is for a special permit for construction of a deck at the back of the property and the location of a concrete slab for air conditioning condensers that would technically be in the flood plain. He said that, from the Wetlands Protection Committee perspective, the elevations done by the Engineer put the concrete slab out of the flood plain but the FEMA maps are another concern. He said that is what is driving the request.

Mr. Morse said that it is a 12,700 square foot corner lot. He said that there is a 30 foot front yard setback requirement for the deck. He said that the deck will be 29.17 feet from the lot line. The Board said that the property is located in a 10,000 square foot Single Residence District. The Board said that the front yard setback on Atwood Street is shy of the 30 foot requirement and the setback from State Street is 27.42 feet, which is also shy of the 30 feet required. Mr. Morse said that there is a slight jog to the back of the house so that you get to 28.8 feet. He said that the deck will be at 29.17 feet.

The Board asked if Mr. Morse considered moving the deck a half foot or making the deck half a foot smaller. Mr. Morse said that the Architect thought that it would not look right. The Board said that not all decks go flush to outside edge of a building. The Board said that it will be less than one foot. The

Board said that it encourages the applicant, to the degree that it is possible, to make the work compliant without creating a significant problem with the design

The Board said that the air conditioning condensers will meet the setback requirement of 30 feet. Mr. Morse said that they moved them from the side of the house. The Board that the Planning Board raised some questions regarding the Flood Plain District. Michael Zehner, Planning Director, said that two different flood lines are noted on the plan. He said that the one that is closer to the house is the FEMA Map line and that is the same line that Wellesley's Zoning District is based on. He said that the Engineer has given more refined information that pulls that line back closer to Fuller Brook. He said that, technically, it is likely outside of the flood plain but it is still within the Flood Plain Zoning District that requires a special permit. He said that he communicated this to the Town's Engineering Department. He said that there are standards in the bylaw about compliance with the plans. He said that he presumed that Dave Hickey, Town Engineer would defer to the Engineer's determination of the actual flood plain and therefore find that the plans were sufficient because they were not encumbering the actual flood plain versus the Flood Plain District. He said that it was his understanding that because the deck does not encroach, according to the Engineer, it would not have to be designed under the Building Code specifications for building in the flood plain. The Chairman asked if there was a condition that the Planning Board would propose if ZBA were to grant the special permit. Mr. Zehner said that, absent any comments on the compliance with the standards, he said that there should be a final determination from the Town Engineer that they are satisfied that it does not encumber the flood zone or flood plain.

The Board said that what is being sought is two special permits.

A Board member said that it seemed like there was some confusion about the request of the Planning Board to have the Engineering Department review the plans. He said that the Board could condition the decision on a follow up by the Engineering Department on the criteria in the bylaw.

A Board member asked if the other Board members were concerned about the request for relief for $\frac{3}{4}$ of a foot. The Chairman said that it will not impinge any more on the setback than the current nonconformity. The Board member said that it is across the street from the nearest house. The Chairman said that it is rather diminimis and he did not have any great concern. The other Board member said that he did not have any concerns.

Mr. Zehner recommended that the Town Engineer confirm that the proposed scope of work does not negatively impact the flood plain, as determined by a professional certified engineer. He said that the concrete slab will be located in the regulatory FEMA Flood Plain but it is not in the flood plain, as determined by an engineer. He recommended that the Town Engineer confirm that finding. The Chairman said that the Board has a stamped plan from a licensed engineer. He said that he was not sure what more they would do other than rely on that. Mr. Morse said that when they went before the WPC, the engineer discussed with them the fact that the deck is high off of the ground and does not touch the flood plain. He said that material will be removed to set the footings and that material will be replaced with cement. He said that there will be no change to the grade. A Board member said that the federal flood plains do require that the water be able to flow in and out. He said that if you put anything into the flood plain, you have to account for it elsewhere on the grading of the property. He said that it seems that the Engineer has indicated that all of the work will be outside of the Federal Flood Plain. Mr. Zehner said that what he would recommend is to have the applicant's engineer submit a map amendment to clarify the

location of the flood plain on the property. He said that they will then actually certify, based on the engineering documentation, the elevation that the engineer has determined. He said that will resolve the question entirely. The Chairman questioned what the Board would be requesting the Town Engineer to do other than to agree with the plan that was submitted. He questioned whether the Town Engineer would go out and do his own investigation. Mr. Zehner said that the standards require that the plans submitted make adequate provision for protection, preservation and maintenance of the water table and water recharge areas within the flood plain. He said that the plan does that because the work is outside of the flood plain, as determined by the Engineer. He said that he did not think that anything further would be required because of that. He said that it should be confirmed by the Town Engineer. The Board discussed inserting a condition that the determination of the Engineer be submitted to the Town Engineer for review. The Chairman said that the Board did receive an email from the Town Engineer. A Board member then recommended that the Board not insert the condition.

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 55 Atwood Street, in a 10,000 square foot Single Residence District, on a corner lot, with a minimum front yard setback of 22.84 feet to Atwood Street and a minimum front yard setback of 27.43 feet to State Street.

The Petitioner is requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that demolition of existing stairs and construction of a deck and a concrete slab underneath for air conditioning units with less than required front yard setbacks to State Street shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

The Petitioner is requesting a Special Permit pursuant to the provisions of Section XIVB and Section XXV of the Zoning Bylaw for demolition of existing stairs and construction of a deck and a concrete slab underneath for air conditioning units in a Flood Plain District.

A Plot Plan, dated 12/8/15, stamped by Joseph R. Porter, Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 7/15/15, prepared by ANZZA Architectural Design, Notice of Intent, prepared by Ecosystem Solutions, Inc., and photographs were submitted.

On November 24, 2015, the Wetlands Protection Committee issued an Order of Conditions, MA DEP #0808.

On January 5, 2016, the Planning Board reviewed the petition and recommended that the ZBA defer the Special Permits.

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 demolition of existing stairs and construction of a deck and a concrete slab underneath for air conditioning units with less than required front yard setbacks to State Street 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 demolition of existing stairs and construction of a deck and a concrete slab underneath for air conditioning units with less than required front yard setbacks to State Street, in accordance with the submitted plot plan and construction drawings.

It is the opinion of this Authority that demolition of existing stairs and construction of a deck and a concrete slab underneath for air conditioning units with less than required front yard setbacks to State Street in a Flood Plain District shall make adequate provision for the protection, preservation and maintenance of the water table and water recharge areas; the preservation of the natural river channel plus sufficient width of overbank areas for the passage of flood flows; the retention of existing floodwater storage capacity; the design of proposed construction in a manner which ensures anchoring to prevent flotation, collapse and/or excessive movement of structures; and the design of public utilities including sewer, water, gas and electrical systems in a manner which will minimize or eliminate flood damage.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for demolition of existing stairs and construction of a deck and a concrete slab underneath for air conditioning units with less than required front yard setbacks to State Street in a Flood Plain District, 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.

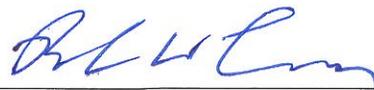
If construction has not commenced, except for good cause, these Special Permits shall expire two years after the date time stamped on this decision.

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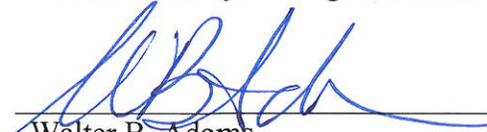
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APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.



Robert W. Levy, Acting Chairman



Walter B. Adams

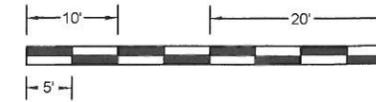


Derek B. Redgate

cc: Planning Board
Inspector of Buildings
lrm

PROPOSED CONDITIONS PLAN

1"=20'



ZONE A LIMIT
FLOOD ZONE
ELEV.=123.3 (NAVD 88)
AS SHOWN FEMA FLOOD MAP
PANEL 25021C0016E

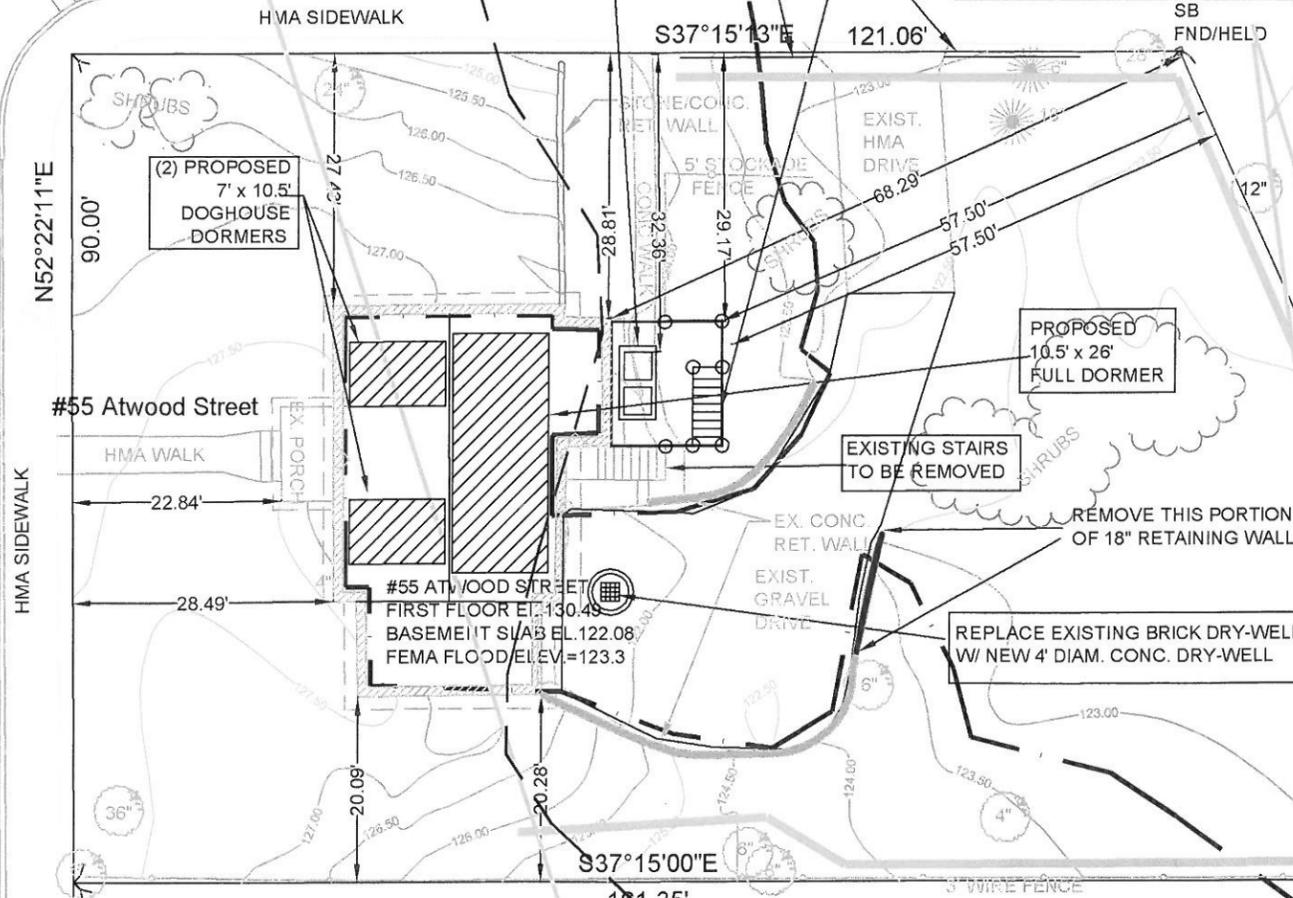
ZONE A LIMIT
FLOOD ZONE
ELEV.=123.3 (NAVD 88)
FROM SURVEY

PROPOSED NEW (2)
SECTIONS OF 15' LONG 6'
HIGH PLASTIC FENCE

PROPOSED
4'x8' CONC. PAD FOR
(2) 3'x3' A.C.
CONDENSER UNITS

PROPOSED
13.5'x 12' ELEVATED DECK
WITH STAIR CASE

STATE STREET
(40' PUBLIC WAY)



LOT COVERAGE CALC.
LOT AREA 12,708 SF
EXISTING:
1092.2 SF EXIST. HOUSE
58.8 SF FRONT PORCH
13.0 SF BACK STAIR LANDING
TOTAL: 1164.0 SF OR 9.2 %
PROPOSED: 1092.2 SF EXIST. HOUSE
58.8 SF FRONT PORCH
135.5 SF NEW REAR DECK
TOTAL: 1,286.5 OR 10.1 %

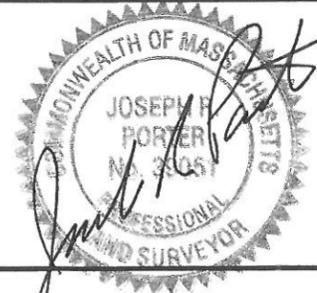
THE TOWN OF WELLESLEY
PUBLIC PARKLAND
FULLER BROOK PARK

#55 ATWOOD STREET
LOT SIZE: 12,708 SF
PARCEL ID# 99-34
ZONING: SR10
SINGLE FAMILY RESIDENTIAL
BOOK 331E2 PAGE 24
DEED: CRIF# 188590 DATED:04-30-14
SHOWN AS LOT D ON PLAN BY
C.B. HUMPHREY CRTF#6605 BK3
DATED: APR. 30, 1923

FLOOD ELEVATION OF 123.3 NAVD 88
FROM FEMA LETTER OF MAP AMENDMENT
CASE# 15-01-1692A, 21 MORTON RD
JULY 23, 2015
400' FEET FROM 55 ATWOOD STREET

Plan Date: 12/8/2015

SURVEYED BY: MARC BESIO, P.E., S.I.T.
DRAWN BY: MARC BESIO, P.E., S.I.T.
DESIGNED BY: MARC BESIO, P.E., S.I.T.
SURVEY CHECK BY: J. PORTER, P.L.S.



MARC BESIO & ASSOCIATES
CIVIL ENGINEERING,
LAND SURVEYING
1373 CENTRE STREET
WEST ROXBURY MA, 02132
TELEPHONE: (617) 904-8638

Owner: JAMES MORSE
(PROPERTY UNDER AGREEMENT)
Mabardy, Michael, Trustee
Atwood Street Realty Trust
31 Farwell Street Natick MA 01760
PHONE: 781-367-9293

ZONING PLAN
BOARD OF APPEALS FOR
PROPOSED NEW DECK AND
CONDENSER UNITS
55 ATWOOD STREET,
WELLESLEY MA