


 RECEIVED
 TOWN CLERK'S OFFICE
 WELLESLEY, MA 02181

 ZONING BOARD OF APPEALS
 TOWN HALL WELLESLEY, MA 02181
 FEB 21 9 31 AM '89

 JOHN A. DONOVAN, JR., Chairman
 ROBERT R. CUNNINGHAM
 KENDALL P. BATES

 ELLEN D. GORDON
 Executive Secretary
 Telephone
 431-1019

 WILLIAM E. POLLETTA
 FRANKLIN P. PARKER
 SUMNER H. BABCOCK

ZBA 89-12
 Petition of Joseph and Adeline Doherty
 14 Oakdale Avenue

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, February 16, 1989 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) of the Town Hall, 525 Washington Street, Wellesley on the petition of JOSEPH AND ADELINE DOHERTY requesting a finding pursuant to Section XVII and Section XXIV-D of the Zoning Bylaw that demolition of their pre-existing, non-conforming dwelling to the allowed footprint at 14 OAKDALE AVENUE, in a Single Residence District; and reconstruction of a 2 and 1/2 story dwelling, approximately 23 feet 8 inches by 43 feet 6 inches on said footprint, shall not be more detrimental to the neighborhood than the existing use and structure.

On January 30, 1989, the petitioners requested a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing were Joseph and Adeline Doherty. Mrs. Doherty said that the planned alterations to the house would be so extensive and expensive that they would like to take the house down and rebuild on the existing foundation with the additions granted in a prior variance.

The Board stated that there was a problem in that if the dwelling was demolished, the construction would be that of a new dwelling, and must be considered as a new dwelling rather than a pre-existing, non-conforming one.

No person present had any comment on the petition.

Statement of Facts

The non-conforming dwelling is located at 14 Oakdale Avenue, in a Single Residence District, on a 10,213 square foot lot, with a minimum front yard setback of 20 feet and a minimum left side yard clearance of 12 feet.

A variance (ZBA 88-52) was granted to the Dohertys on July 14, 1988, allowing construction of a two-story addition with less than the required front setback on the right side of the dwelling; a two-story addition on the left rear side of the dwelling and a bulkhead on the left rear side of the dwelling, both of which had less than the required left side yard clearance.

The petitioners are presently requesting a finding that the demolition of their dwelling to the allowed footprint and reconstruction of a 2 and 1/2 story dwelling approximately 23 feet 8 inches by 43 feet 6 inches on the allowed footprint would not be more detrimental to the neighborhood than the existing use and structure.

ZBA 89-12
Petition of Joseph and Adeline Doherty
14 Oakdale Avenue

RECEIVED
TOWN CLERK'S OFFICE
WELLFISLEY, MA 02181
FEB 24 9 31 AM '89

A Plot Plan, dated January 10, 1989, drawn by George N. Giunta, Registered Land Surveyor; construction plans and elevations, dated May 31, 1988, revised on January 20, 1989, drawn by D. Michael Collins; and photographs were submitted.

The Planning Board, on February 7, 1989, voted to oppose the granting of this request based on the fact that it believes a new structure should comply with the Zoning Bylaw setback requirements.

Decision

This Authority has made a careful study of the evidence presented. The subject house does not conform to the present Zoning Bylaws as noted in the foregoing Statement of Facts.

Section XVII of the Zoning Bylaw states:

"...Pre-existing non-conforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the Permit Granting Authority that such change, extension or alteration shall not be substantially more detrimental than the existing non-conforming use to the neighborhood."

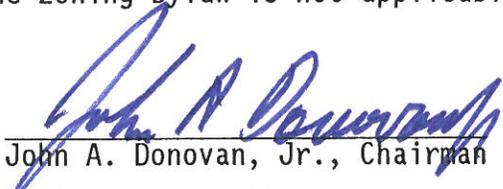
It is the opinion of this Authority that "change, extension or alteration" does not include demolition of a dwelling, and that once a dwelling has been demolished, and any new construction, even construction upon the allowed footprint, must be considered as construction of a new dwelling which must conform to the present Zoning Bylaws.

It is the opinion of this Authority that once the pre-existing non-conforming dwelling is demolished, the dwelling would lose its pre-existing non-conforming status; and that the petitioners would not have a right to construct a new non-conforming dwelling on the allowed footprint.

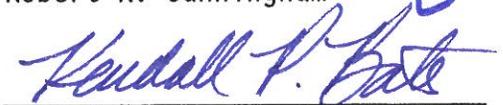
Therefore, it is the unanimous decision of this Authority that, as a finding pursuant to Section XVII and Section XXIV-D of the Zoning Bylaw is not applicable to this petition, the petition is dismissed.

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.

cc: Planning Board
Inspector of Buildings
edg


John A. Donovan, Jr., Chairman

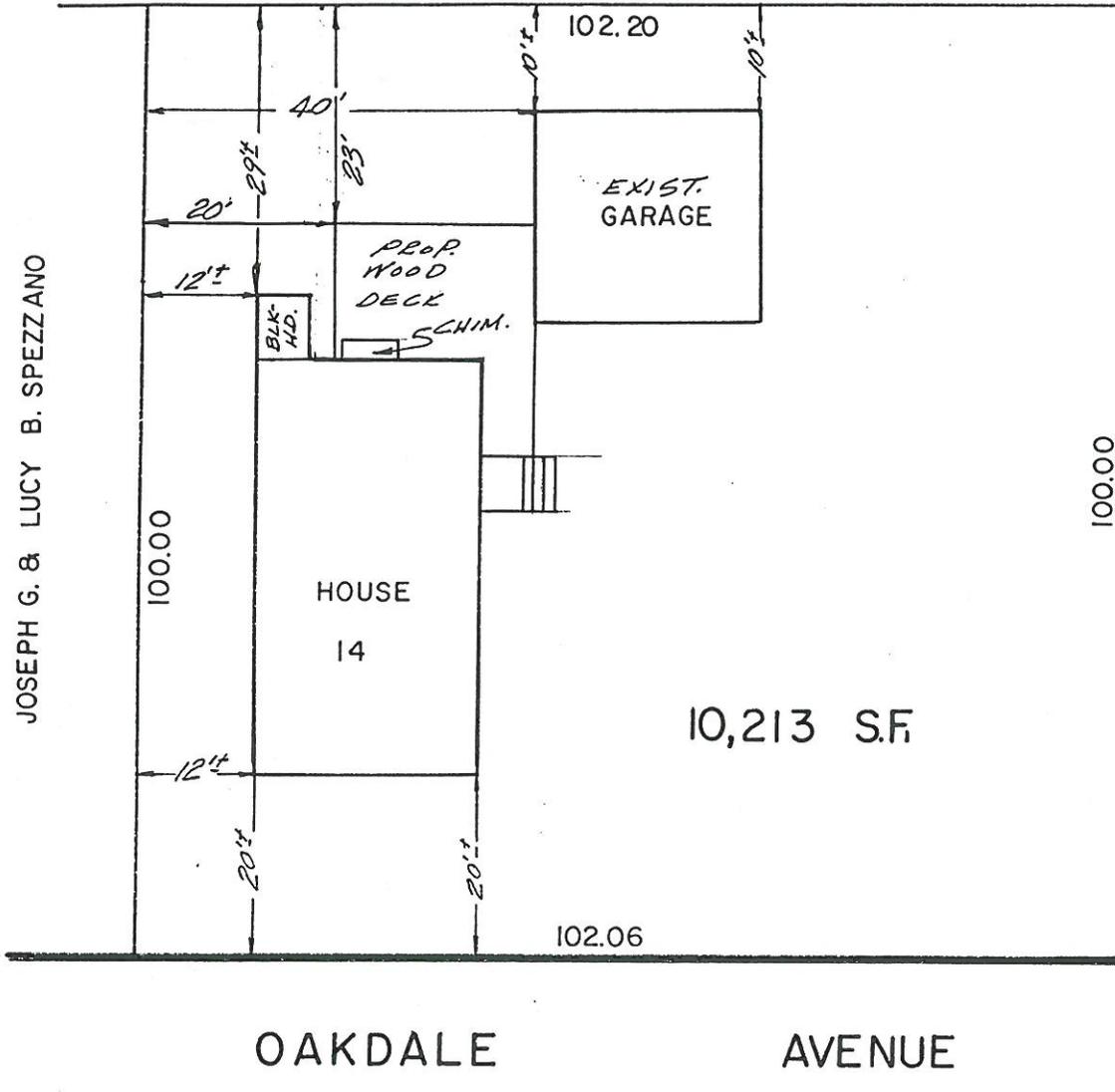

Robert R. Cunningham


Kendall P. Bates

RICHARD W. BARRY

JOSEPH G. & LUCY B. SPEZZANO

ALLAN W.H. & CYANTHIA L. GRANT



OLGA A. & JARMILA RICHTER

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY, MA 02181
JAN 30 11 21 AM '89

OAKDALE AVENUE

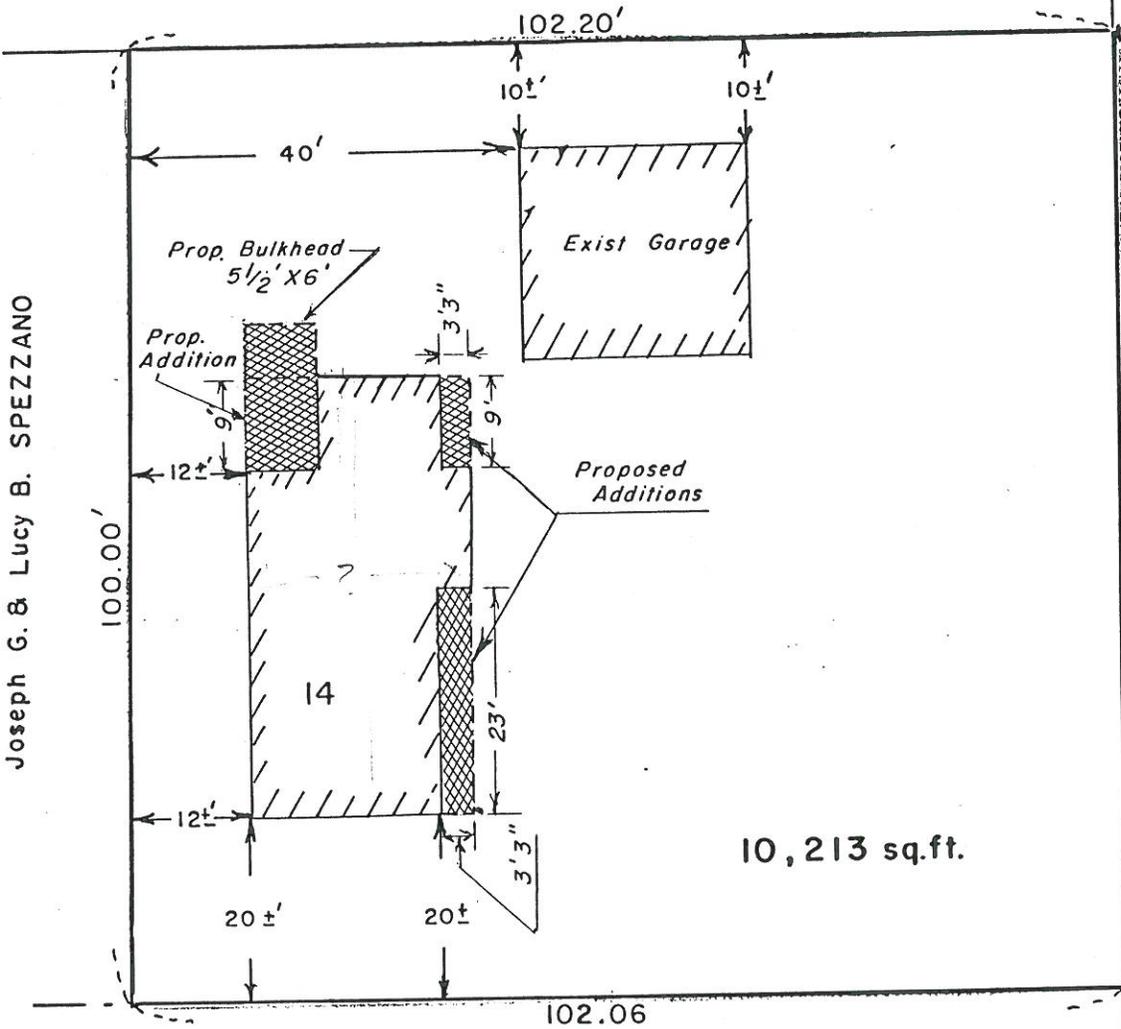
PLOT PLAN OF LAND
IN
WELLESLEY — MASS.

JAN. 10, 1989 SCALE 1"=20"

NEEDHAM SURVEY ASSOCIATES
76 NEHOIDEN ST.
NEEDHAM, MASS.



Richard W. BARRY



Joseph G. & Lucy B. SPEZZANO

Allan W.H. & Cynthia L. GRANT

Ota A. & Jarmila RICHTER

OAKDALE AVENUE

RECEIVED
 TOWN CLERK'S OFFICE
 JAN 30 11 21 AM '89
 JUN 6 9 46 AM '88



PLAN OF LAND
 in
 WELLESLEY, MASS.

Owned by
 JOSEPH and ADELIN DOHERTY

MAY 31, 1988

SCALE: 1" = 20'