TOWN OF WELLESLEY MASSACHUSETTS

ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02181-5992

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SUMNER H. BABCOCK
ROBERT A. BASTILLE

ZBA 97-24
Petition of Harry E. and Deborah E. Merkin
47 Pine Plain Road

Pursuant to due notice, the Permit Granting Authority and the Special Permit Granting Authority held a Public Hearing on Thursday, April 24, 1997 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) at the Town Hall, 525 Washington Street, Wellesley, on the petition of HARRY E. AND DEBORAH E. MERKIN requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that the raising of the ridge line of the roof 10.5 feet above their existing nonconforming garage to accommodate a second story addition 20.2 feet by 18.2 feet, with less than the required right side yard setback, at their nonconforming dwelling with less than the required right side yard setback, at 47 PINE PLAIN ROAD, in a Single Residence District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. There will be no change in the footprint.

A variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw is also requested to allow their 16.4 foot by 18.8 foot deck, which has less than the required right side yard setback, to remain. Said deck was built by a prior owner without a building permit, and is in violation of the Zoning Bylaw.

On April 7, 1997, the petitioners filed a request for a hearing before these Authorities, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing were Deborah and Harry Merkin. Mrs. Merkin said that they would like to build two bedrooms over the existing garage. They have a new baby, whose room is tiny; and they would like to have a guest bedroom. The footprint will not change.

Mrs. Merkin stated that the deck had been built by a prior owner. In the planning of the garage addition, they discovered that the deck encroached 6 inches on the right side line, and did not have a building permit.

Statement of Facts

The subject nonconforming property is located at 47 Pine Plain Road, in a Single Residence District, on a 10,097 square foot lot, and has a minimum right side yard clearance of 17.7 feet, and a conforming lot coverage of 17.5%.

The petitioners are requesting a Special Permit/Finding that the raising of the ridge line of garage roof 10.5 feet to accommodate a 20.2 foot by 18.2 foot second story addition, which will cover the existing nonconforming garage and incorporate a 5.4 foot by 6.8 foot portion of the deck, will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The nonconforming garage has a minimum right side clearance of 17.7 feet. There would be no change in the footprint.

A variance is requested to allow the 18.8 foot by 16.4 foot deck, with a minimum right side clearance of 19.5 feet to remain. Said deck was built by a prior owner without a building permit in violation of the Zoning Bylaw.

A Plot Plan dated March 17, 1997, drawn by Paul J. Sawtelle, Registered Land Surveyor; Existing and Proposed Floor Plans and Elevations dated March 24, 1997, drawn by HPA Design, Inc.; and photographs were submitted.

On April 15, 1997, the Planning Board reviewed the petition and voted to offer no objection to the granting of both requests.

Decision

The Special Permit Granting Authority and the Permit Granting Authority have made a careful study of the materials submitted and the information presented at the hearing. The subject dwelling does not conform with the current Zoning Bylaw, as noted in the foregoing Statement of Facts.

It is the finding of the Special Permit Granting Authority that the proposed second story addition above the existing garage and a portion of the deck, which includes raising the ridge line of the garage roof 10.5 feet, will not be substantially more detrimental to the neighborhood than the existing nonconforming structure as there will be no further encroachment on the right side lot line.

A Special Permit for the construction is granted, as voted unanimously by this Authority at the Public Hearing, subject to construction in accordance with the submitted plot plan and construction drawings.

It is the opinion of the Permit Granting Authority that the present owners should not be penalized for the transgressions of a prior owner, and that the existing deck is less nonconforming than the existing dwelling. It is the further opinion of this Authority that a literal enforcement of Section XIX of the Zoning Bylaw would involve a substantial hardship to the petitioners, and that desirable relief may be granted without substantially derogating from the intent or purpose of the Zoning Bylaw.

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Therefore, a variance is granted, as voted unanimously by this Authority at the Public Hearing, to allow the existing deck to remain 19.5 feet from the right side lot line, on the condition that the petitioners file an application for a building permit prior to the issuance of any building permit for the second story addition above the garage.

The Inspector of Buildings is hereby authorized to issue a permit for construction of the second story addition upon receipt and approval of a building application and construction plans, but not until the petitioners have filed for a building application for the allowed deck.

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.

Kendall P. Bates, Acting Chairman

William E. Polletta

Robert A. Bastille

cc: Planning Board
Inspector of Buildings
edg

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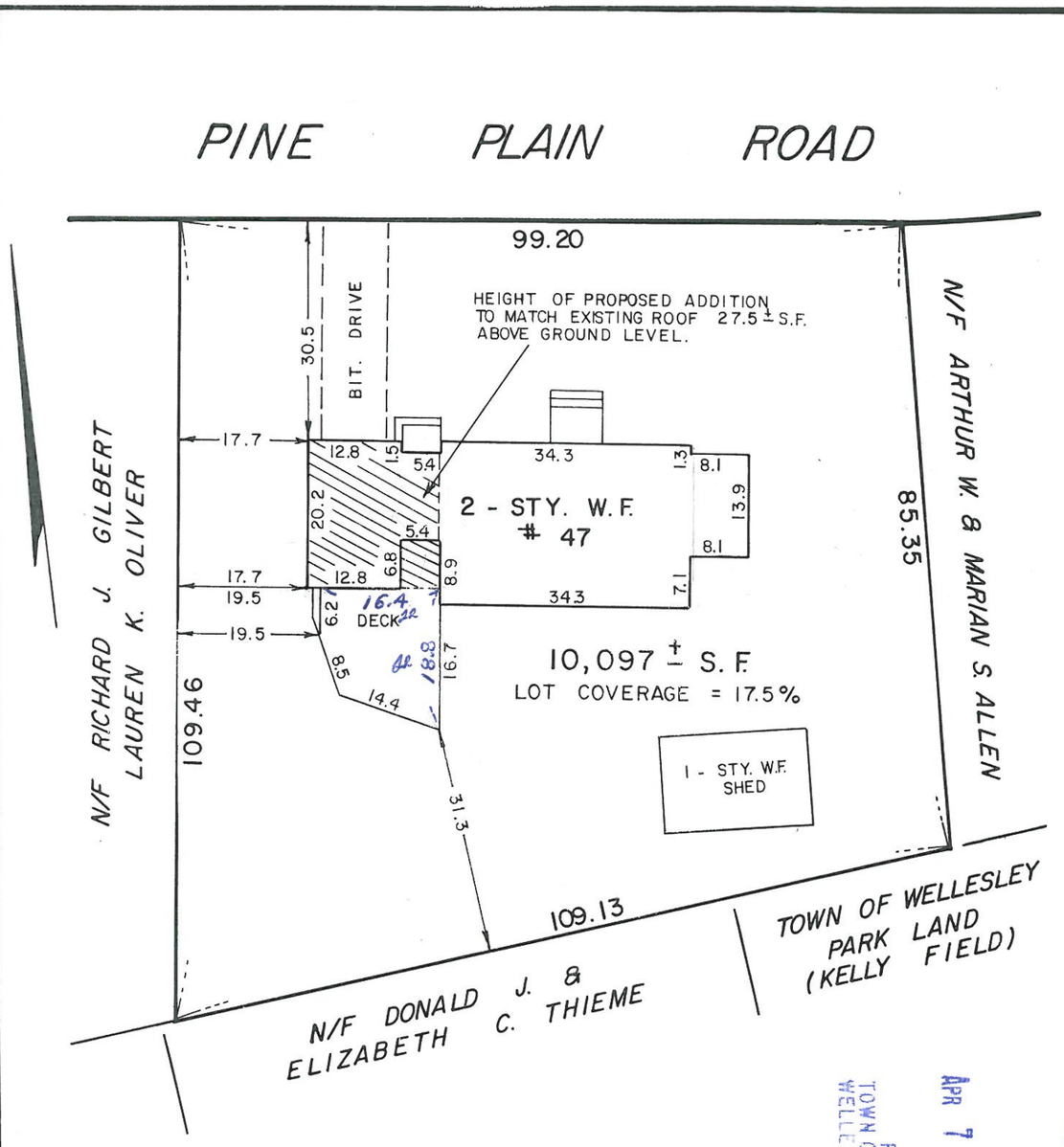

RECORD OWNER

HARRY E. & DEBORAH E. MERKIN

BUILDING ZONE

SINGLE RESIDENCE
10,000 S.F.

ASSESSORS REF.

MAP 169, ROUTE 54

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COMMONWEALTH OF MASSACHUSETTS
PAUL J. SANTELLI
NO. 9747
REGISTERED
LAND SURVEYOR

PLAN OF LAND IN WELLESLEY, MASS.

SCALE: 1" = 20'
MASS BAY SURVEY, INC.

MARCH 17, 1997
NEWTON, MASS.