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ZONING BOARD OF APPEALS

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

1999 APR 21 A 9:09

KENDALL P. BATES, CHAIRMAN
WILLIAM E. POLLETTA, VICE CHAIRMANELLEN D. GORDON
EXECUTIVE SECRETARY
TELEPHONE
(781) 431-1019 EXT. 208ROBERT A. BASTILLE
CYNTHIA S. HIBBARD

ZBA 99-14

Petition of Richard D. and Kathleen A. Mulroy
38 Livermore Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, April 8, 1999 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 RICHARD D. AND KATHLEEN A. MULROY requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that the demolition of the existing one-story 19.7 foot by 18.4 foot family room and construction of a 19.7 foot by 18.4 foot two-story addition with less than the required left side yard setback at their nonconforming dwelling with less than the required left side yard setback, at 38 LIVERMORE ROAD, in a Single Residence District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming dwelling.

On March 22, 1999, the petitioners filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

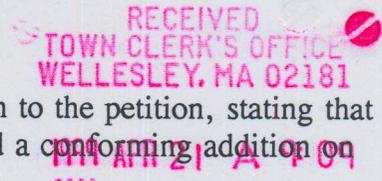
Presenting the case at the hearing were Richard and Kathleen Mulroy. Mrs. Mulroy said that they would like to demolish the existing one-story family room, which had been built with a variance about 20 years ago, and build a two-story family room/master bedroom on the existing foundation. There would be no expansion of the footprint.

The Board noted that the Planning Board had no objection to the petition.

William Mone, 75 Abbott Road, raised strong objections to the granting of the request. He stated that the prior owner, Peter Rozantes, had begun construction of the addition without a permit. During construction, he was required to stop building and come before the Zoning Board for a variance, as the addition was nonconforming. He felt the present owners should not be allowed to "piggy-back" on the original variance, and that the requested addition would be an enormous intensification of what should never have been originally allowed.

Richard Mulroy stated that he had bought the house at auction. He was familiar with the interior of the house, but was not aware of the addition. They did not build the addition, but must deal with it now as the roof and windows are leaking. The house, as well as the neighborhood, will be improved with the addition. They had attempted to design an addition at the rear which would meet the 20 foot setback, but it made no architectural sense. Their left side abutter has no problem with the project.

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Mary Beth Sandman, 93 Abbott Road, also expressed opposition to the petition, stating that if the existing addition was demolished, the Mulroys could build a conforming addition on the right side of the house.

The Board commented that the house was originally built too close to the lot line under current zoning requirements. If one is going to build an addition, one must start with existing conditions. The Board does allow new construction, which is nonconforming, particularly if the addition does not further encroach on existing lot lines. It is difficult to understand the neighbors' objections, when a conforming addition would result in the loss of existing open space.

Dan Kasper, 90 Abbott Road, urged the Board not to grant the petition, as he felt that the variance granted to the Rozantes was in error.

Mr. Mone stated that the petition involves an intensification of a nonconformity, which was created by a variance. In his opinion, the Board must find that the addition, which is a mass, will be more detrimental.

The Board stated that there is a difference between "intensification" and "detriment", and that the two are not synonymous.

Statement of Facts

The subject property is located at 38 Livermore Road, in a Single Residence District, on a 23,134 square foot lot, with a minimum left side yard clearance of 9 feet.

In October, 1997, the prior property owner, Peter Rozantes, appeared before the Board of Appeals requesting a variance for an 18.4 foot by 19.7 foot one-story addition, with a minimum left side yard setback of 11.2 feet from the left rear corner. Mr. Rozantes had begun construction without a building permit and in violation of the Zoning Bylaw. The Board, stating it did not countenance Mr. Rozantes' behavior, granted the requested variance (ZBA 87-82) as the proposed addition did not encroach further than the existing house on the left side line.

The petitioners are now seeking a Special Permit/Finding that the demolition of said addition and construction of a 19.7 foot by 18.4 foot two-story addition, built on the existing foundation, with a minimum left side yard setback of 11.2 feet, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan dated 2/9/99 drawn by George N. Giunta, Registered Land Surveyor; Floor Plans and Elevations dated 3/26-31/98, drawn by Streibert Associates; and photographs were submitted.

On April 5, 1999, the Planning Board reviewed the petition and had no objection to the granting of the request.

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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 dwelling does not conform with the current Zoning Bylaw, as noted in the foregoing Statement of Facts.

It is the finding of this Authority that the proposed two-story addition minimally intensifies the existing nonconformance in that a second story will occupy nonconforming space previously unoccupied, but that the trees, which provide a screen on the left side line, will negate any impact to the left side abutter.

It is the finding of this Authority that there will be no further encroachment on the left side yard than the existing addition, and less encroachment than provided by the existing dwelling.

It is the finding of this Authority that the reduction of open space by relocating the addition in a conforming manner on the right side of the dwelling would be detrimental to the neighborhood.

It is the finding of this Authority that for the above reasons the construction of the two-story addition on the foundation of the existing nonconforming addition will 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, to demolish the existing nonconforming addition and construct a two-story addition on the existing foundation, subject to construction in accordance with the submitted plot plan and construction plans.

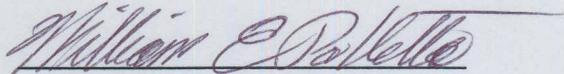
The Inspector of Buildings is hereby authorized to issue the required permits upon receipt and approval of a demolition application, a building application and detailed construction plans.

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.

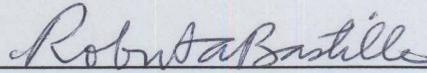
cc: Planning Board
Inspector of Buildings
edg



Kendall P. Bates, Chairman



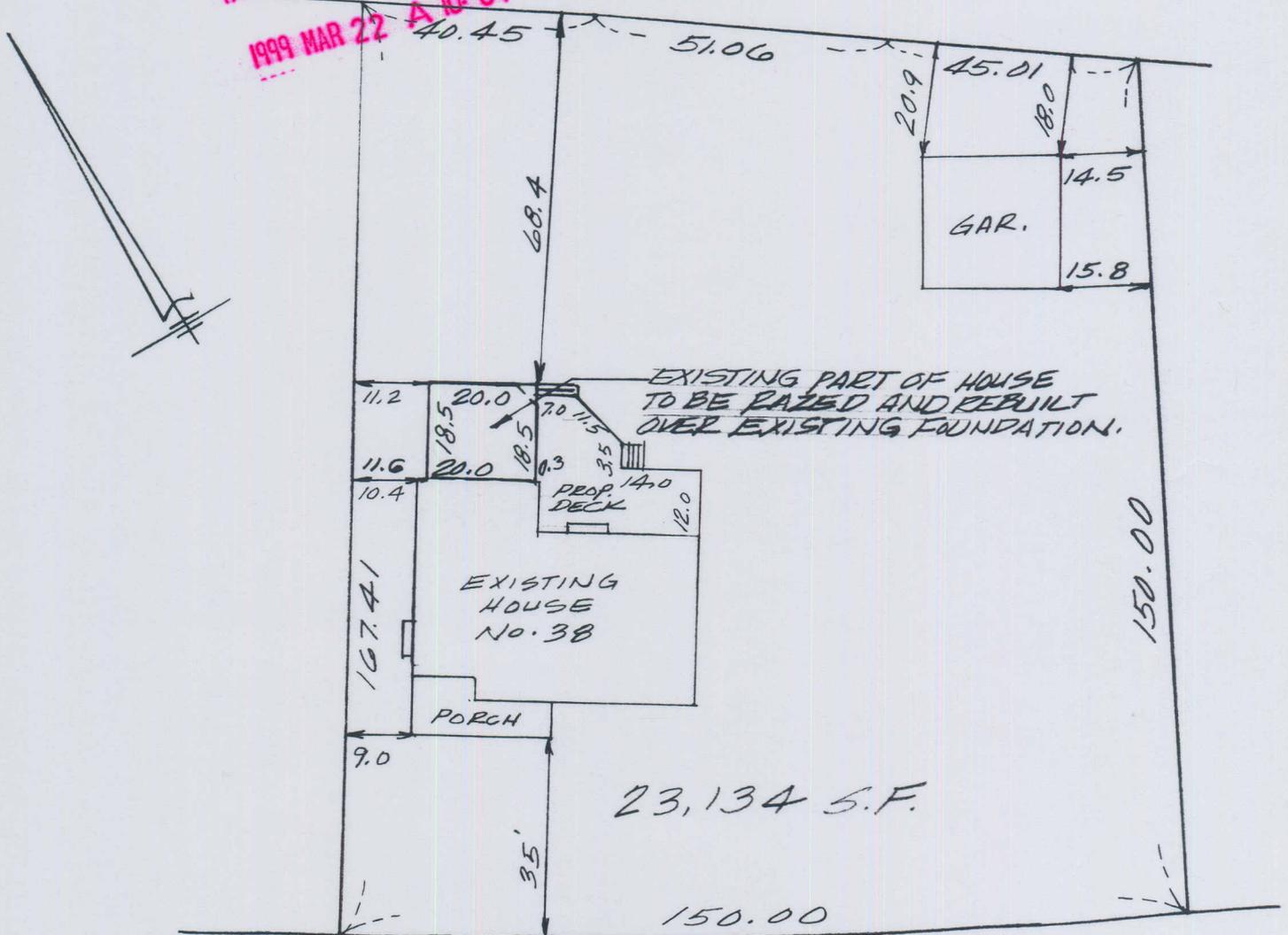
William E. Polletta



Robert A. Bastille

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1999 MAR 22 A 10:01



LIVERMORE ROAD

PLOT PLAN OF LAND WELLESLEY---MASS.

FEB. 09, 1999 SCALE 1"=30 '
NEEDHAM SURVEY ASSOCIATES, INC.
281 CHESTNUT STREET
NEEDHAM, MA. 02192

Existing Lot Cov. = 12.15%
Proposed Lot Cov. = 14.38%

