TOWN OF WELLESLEY MASSACHUSETTS

ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

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ZBA 93-45
Petition of Elaine B. Spoto
19 Cushing Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, June 17, 1993 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 ELAINE B. SPOTO requesting a Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that the demolition of an existing nonconforming detached garage and construction of a new detached garage approximately 21 feet by 21 feet, with less than the required left side yard and rear yard setbacks, at 19 CUSHING ROAD, in a Single Residence District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On June 1, 1993, 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 Elaine Spoto, who was accompanied by her husband, Vincent, and Kevin Clancy, William Mone and Marjorie Cook, counsels for the petitioner. Mrs. Spoto read a statement into the record, a copy of which was included in the filing submitted by Kevin Clancy.

The Board questioned why a two-car garage was proposed rather than replacement of a one-car garage. Mrs. Spoto explained that the existing garage is not the size of a standard one-car garage, and that they have two cars. A standard one-car garage would have had to have been brought forward 8 feet due to the convergence of the property lines, while a standard two-car garage would have come forward 17 feet. The proposed garage is a compromise and will come forward 10 feet.

Mr. Clancy stated that the proposed garage encroachment will be decreased one foot on the rear and left side setbacks, and that the roof line will be moved farther away from the Crowley property line. As the encroachment is not being intensified, the issue of detriment to the neighborhood does not arise. However, the support of 36 neighbors demonstrates that it will not be more detrimental to the neighborhood.

Mr. Clancy said that the question of a variance had arisen. The Planning Board had said that the petition met the conditions of a variance as well as a Finding, due to the shape of the lot.

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Sue Ahlgren, 26 Cushing Road, read a letter of support into the record.

Alison Rhodes Schecter, Chairman of Wellesley Chamber of Commerce and President of Prudential Landmark Property Specialists read a letter of support into the record, a copy of which is included in Mr. Clancy's submission. She also read a letter of support from the prior owners of the Crowley property.

Mary Savoka Crowley, 21 Cushing Road, expressed strong opposition to the petition. She said that the issue is not the need to replace the Spoto garage, but the size of the replacement. Her garage, located directly next to the existing Spoto garage, is 12 feet by 18 feet and is adequate for storage of one car and other equipment. Many of the homes in the neighborhood also have one-car garages. They would like the new garage to remain approximately the size of the existing footprint, rather than almost double the size.

Mrs. Crowley agreed that the Spoto lot does have hardships and is one of the smallest lots in the area. However, she felt that the size of the garage could be reduced so that it would not have to be moved forward as far as planned, as the new location will result in a wall of structures consisting of the Crowley garage, the Spoto garage and the Spoto house being created on the property line.

Mr. Clancy stated that two-car garages exist at 10, 14, and 18 Cushing Road; 10, 11 and 25 Hawthorne Road; 50 Bradford Road and 6 Greenwood Road.

Mr. Spoto noted that construction of a one-car garage would require that the structure be brought forward 7.9 feet. The proposed 21 by 21 foot garage increases the forward position by 2 feet. The width of the garage will increase from 12 to 21 feet, which will affect the Carr property which abuts the rear lot line. The Carrs are in support of the petition.

Ms. Cook agreed with Mr. Spoto's statement and added that any functional garage would require the structure to be brought forward. The additional 2 feet will not create a "wall". Shrubbery screening the new garage is in place and could be augmented. Mrs. Spoto added that she had offered and was again offering to plant whatever additional screening the Crowleys would want or to construct a fence.

Mrs. Crowley stated that due to the topography of the area, the living portion of her home is about 10 feet above the Spoto garage, so that in the proposed location, they will be able to see the entire garage.

As the Spotos intend to sell the property in the future, the issue of the proposed construction for the purpose of increasing the value and marketability of the property for resale was discussed. The Board stated that the sale of property is not grounds for granting permits.

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Mr. Mone explained that the hardship on the property is the shape of the lot, which is unique. He submitted a copy of a page of the 1935 Town atlas showing the neighborhood layout. The Spoto lot has a triangular shape at the rear peculiar to the lot. He added that as the new garage would be less nonconforming than the existing garage, he did not feel it would be an intensification of the nonconformity, but if it were found to be an intensification, in light of the neighborhood support, it would not be detrimental to the neighborhood.

Debbie Carr, owner of 11 Cushing Road and rear yard abutter, expressed support for the petition.

Statement of Facts

The subject property is located at 19 Cushing Road, in a Single Residence District, on a 10,000 square foot lot and contains a single family dwelling and a detached 12.2 foot by 18.2 foot garage which has a minimum left side yard clearance of 11.7 feet and a minimum rear yard clearance of 4.9 feet.

The petitioner is requesting a Finding that the proposed demolition of the existing nonconforming garage and construction of a new detached garage, approximately 21 feet by 21 feet, with a minimum left side yard clearance of 12.7 feet and a minimum rear yard clearance of 5.9 feet, will not be substantially more detrimental to the neighborhood than the existing nonconforming garage.

A Plot Plan dated April 15, 1993, drawn by Sidney R. Vaughan, Registered Professional Land Surveyor; floor plans and elevations dated May, 1993, drawn by Wellesley Design; and photographs were submitted.

Letters of support were received from the following: Mr. and Mrs. Demers, 20 Cushing Road; Mr. and Mrs. Ahlgren, 26 Cushing Road; Mr. and Mrs. Thomas, 17 Cushing Road; Mr. and Mrs. Sullivan, 18 Cushing Road; Mr. and Mrs. Carothers, 22 Cushing Road; Mr. and Mrs. Carr, 11 Cushing Road. Additional letters of support from twenty-three more neighbors were included in Attorney Clancy's submission.

A letter in opposition to the petition was received from Mr. and Mrs. Crowley, 21 Cushing Road.

On June 15, 1993, the Planning Board reviewed the petition and voted unanimously to recommend that the petition be granted either as a Special Permit or a variance, whichever the Board of Appeals deems appropriate.

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Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. Neither the existing garage nor the proposed garage conform to the current Zoning Bylaw as noted in the foregoing Statement of Facts.

It is the opinion of this Authority that, although the future sale of the subject property and its increased marketablility due to the construction of a two-car versus a one-car garage were discussed, this is not a zoning issue, and therefore has no relevance in this case.

It is the unanimous opinion of this Authority that as the proposed garage will decrease the existing encroachment on both the rear and left side lot lines by one foot, said garage will not intensify the existing nonconformity nor will it create additional nonconformities. Therefore, pursuant to the provisions of Section XVII of the Zoning Bylaw, the applicant is entitled to the issuance of a Special Permit without proceeding to the determination regarding detriment to the neighborhood.

However, it is the further opinion of this Authority that had they found that said garage would intensify the existing nonconformity without creating additional nonconformities, they would also have found that said change in structure would not have been substantially more detrimental to the neighborhood than the existing nonconforming structure, as the proposed garage will be less nonconforming than the existing garage; there are ample precedents for two-car garages in the neighborhood and the neighborhood has expressed overwhelming support for the petition.

Both the Planning Board and petitioner's counsel have suggested that the petition might have been submitted as a request for a variance from the terms of Section XIX of the Zoning Bylaw rather than under the provisions of Section XVII of the Zoning Bylaw.

It is the opinion of this Authority that had the petition been submitted pursuant to Section XIX of the Zoning Bylaw as a request for relief from the left side and rear yard setbacks, it would have also been granted as hardship is evident due to the shape of the lot which is unique to the lot; the hardship is not self-created; and relief could be granted without substantial detriment to the public good, which would neither nullify nor substantially derogate from the intent or purpose of the Zoning Bylaw.

Therefore, a Special Permit is hereby issued for construction of the proposed garage subject to construction in accordance with the Plot Plan and construction drawings as submitted.

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The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of 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.

John A. Donovan, Jr., Chairman

Kendall P. Bates

Robert R. Cunningham

cc: Planning Board
Inspector of Buildings
edg

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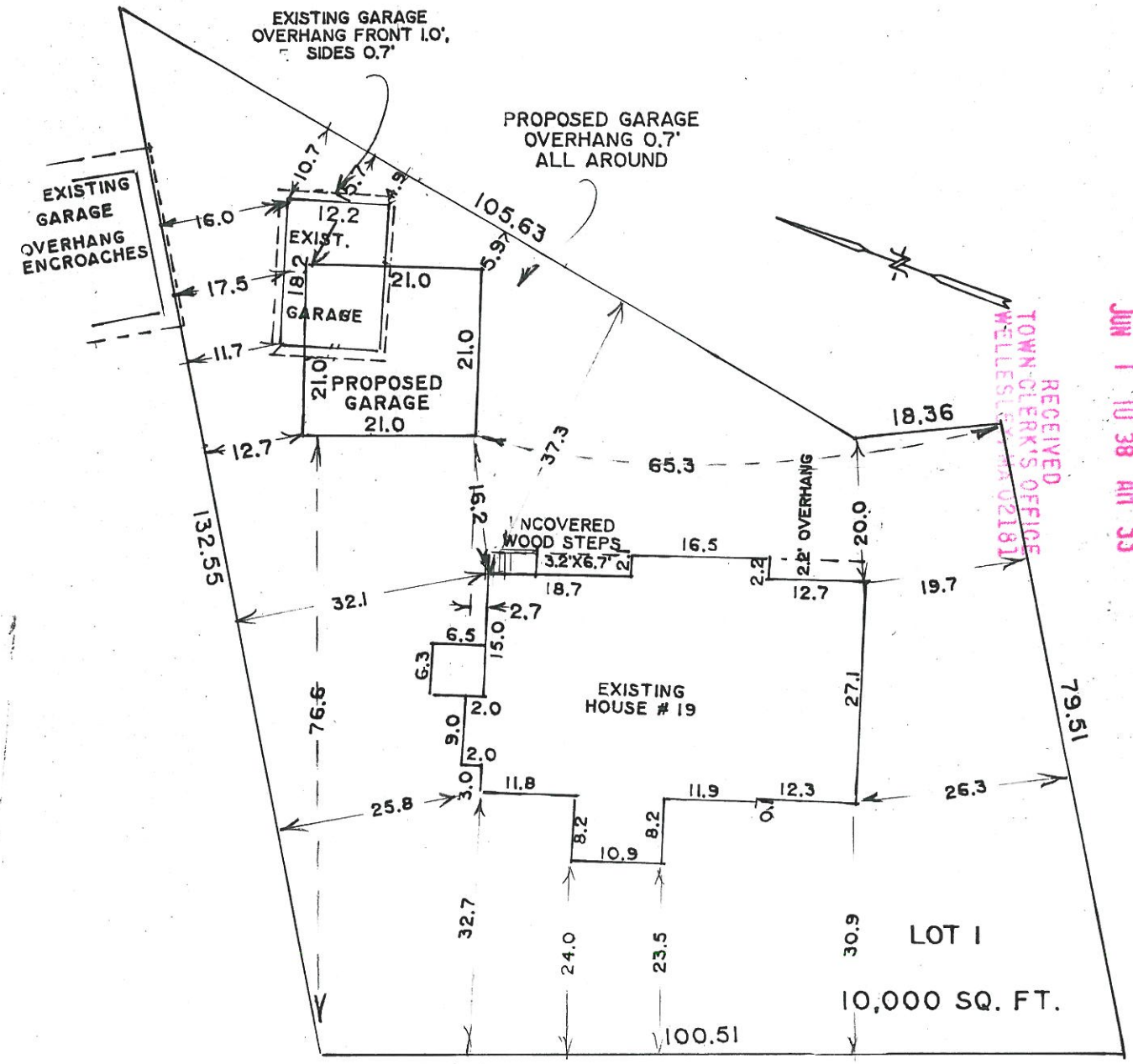

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CUSHING ROAD

PLOT PLAN OF LAND IN WELLESLEY, MASS.

SCALE : 1 INCH = 20 FEET
CHENEY ENGINEERING CO., INC.
32 JUNCTION ST., NEEDHAM, MASS.
SURVEY APRIL 15, 1993

COMMONWEALTH OF MASSACHUSETTS
SIDNEY R. VAUGHAN
No. 11011
REGISTERED PROFESSIONAL LAND SURVEYOR

Sidney R. Vaughan