

WN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

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

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ZBA 2018-17
Petition of Niels Boegholm
2 Pleasant Street

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WELLESLEY, MASS.

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, April 5, 2018, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Niels Boegholm requesting a Variance and/or a Special Permit/Finding pursuant to the provisions of Section XVII, Section XIX, Section XXIV-D and Section XXV of the Zoning Bylaw that demolition of existing steps and construction of a new entry with less than required front yard setbacks, and construction of a second story addition over an existing nonconforming structure with less than required left side yard setbacks, on a 5,578 square foot lot in a General Residence District in which the minimum lot size is 10,000 square feet, at 2 Pleasant Street, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. Existing lot coverage is 25.4 percent and proposed lot coverage will be 25.9 percent.

On March 12 2018, 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 Kip Schultz, representing Niels Boegholm, the Petitioner. He said that Mr. Boegholm has owned an 1,800 square foot house at 2 Pleasant Street since 2004. He said that the house was built in 1917 and sits on a 5,578 square foot lot. He said that the request is for a special permit for a pre-existing nonconforming structure with nonconforming setbacks. He said that there is a 5 by 13 foot first floor structure that they would like to build on top of at the back. He said that the stairs that lead into the house at the front have no landing. He said that they currently have an active permit for interior renovations and as part of that they have to bring the house up to Code. He said that they have to reinforce the floor and add insulation to the front entryway, which is forcing them to raise the door four inches. He said that they are now required to rebuild the front landing and they have to build it to Code. He said that they will need a variance to do that because they cannot meet the setbacks. The Chairman said that the 24 square foot landing would be by right. The Executive Secretary said that the landing will be less than 25 feet to the street line. Mr. Schultz said that there is 13 feet from the front of the house to the street line. He said that they are proposing to have it be 9.1 feet with the covered landing. He said that the project was advertised as a variance and a special permit.

A Board member said that there is a provision under the Building Code that if there is a conflict between requiring the Building Code for safety and egress, that can overrule the Zoning Bylaw. He said that causes the building official to have to make a determination that they could not solve the Building Code nonconformities some other way. He said that could be used to allow the proposed stair.

The Chairman said that this is a small addition and there is no impact to anything around it. He asked the Executive Secretary why this needs to be a variance. Ms. Mahoney said that to meet the exception for front yard setbacks, pursuant to Section XIX of the Zoning Bylaws, the front entry cannot exceed fifty square feet, project more than five feet from the face of the building and cannot come closer than 25 feet to the street line. The Chairman said that the definition for front yard setbacks does not have any requirements to it. He said that if the proposed entry was greater than 50 square feet, the front yard depth would be 9.1 feet, not 13 feet. He said that because it is 24 square feet, which is less than 50 square feet, the setback is measured to the front of the building. He said that the definition does not say that you cannot have something in that space, it simply tells you where to determine what the front yard depth is before you determine whether it complies with the bylaw or not. He said that in this case, we know that it does not comply with the bylaw because the building is 13 feet away. He said that he would interpret it that because this is 24 square feet, it is less than the 50 square feet that is allowed in the front yard setback. He said that, therefore, 13 feet is the front yard setback. He said that clearly does not comply with the bylaw, which the Board knew was one of the nonconformities. He said that to his way of thinking the proposed entry, in terms of Zoning action, is a non-issue.

A Board member read an excerpt from Section XIX of the Zoning Bylaw. He said that the front yard is measured from the street line to the building extending across the entire front of the lot. The Chairman said that it further discusses excepts, including an entrance porch on the first floor which neither exceeds a total area of 50 square feet nor projects more than five feet from the face of the building nor extends nearer than 25 feet to the street line. He said that if your front wall is 100 feet from the property line and you have 100 square feet that is a 10 by 10 landing, your front yard is not 100 feet, it is 90 feet. A Board member said that he agreed with the Chairman's assessment. He said that he did not think that this would require a variance. He said that one could make an argument that this property is suitable for a variance. The Chairman asked Mr. Schultz if he had a piece of paper from the Building Inspector saying that he needed a variance to do this. Mr. Schultz said that he met with the Michael Grant and Miss Mahoney and that was their determination.

Catherine Johnson, Planning Board, said that this issue has come up many times before. She said that is something that the Planning Board will be looking at as part of their work plan. She said that the Planning Board did not see the legal notice that requested a variance, so they only looked at this as a special permit/finding.

The Board discussed granting a special permit, letting Mr. Grant deny it and have it return to the Board, unless he was satisfied that the Board granted a special permit. A Board member said that it is an existing nonconformity. A Board member said that the Board has always interpreted the bylaw to not exacerbate nonconformities in a special permit context. He said that is what this is doing. He said that the front steps are going more into the setback than the existing. A Board member said that is driven by the Building Code. The Chairman said that if the assertion is that it needs a variance because it is an exacerbation of an existing nonconformity, he can understand that. A Board member said that the Board still may not treat this as a special permit for that reason unless it is considered to not be a Zoning violation. The Chairman said that you could still treat this as a special permit because the definition of front yard exempts a landing that is less than 50 square feet. He said that this is not projecting more into the 13 feet, therefore it is not an increase in the nonconformity, therefore it does not need a variance. He said that he found it hard to believe that they would need a variance for a 24 square foot landing.

The Board discussed the possibility of a side entry, noting that there would be some disadvantages to switching the stair to the side. Mr. Boegholm said that it is supposed to be the main entrance to the house.

The Chairman said that this is a corner lot, so there are two front yards, neither of which complies. A Board member said that there may be three front yards unless Mr. Grant decides that Leary Road does not constitute a front yard setback.

A Board member said that he had not heard any evidence to support a variance. A Board member said that he was more than happy to treat this as a special permit. He said that if Mr. Grant feels that he cannot issue a permit, the Petitioner will have to come back before the Board. A Board member said that the Board has at times allowed *diminimis* construction.

There was no one present at the public hearing who wished to speak to the petition.

Statement of Facts

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The subject property is located at 2 Pleasant Street, on a 5,578 square foot lot in a General Residence District in which the minimum lot size is 10,000 square feet, with a minimum front yard setback of 13 feet, a minimum left side yard setback of 17.8 feet, and lot coverage of 25.4 percent. The existing garage has a minimum rear yard setback of 1 foot and a minimum right side yard setback of 3.4 feet.

The Petitioner is requesting a Variance and/or a Special Permit/Finding pursuant to the provisions of Section XVII, Section XIX, Section XXIV-D and Section XXV of the Zoning Bylaw that demolition of existing steps and construction of a new entry with less than required front yard setbacks, and construction of a second story addition over an existing nonconforming structure with less than required left side yard setbacks, on a 5,578 square foot lot in a General Residence District in which the minimum lot size is 10,000 square feet, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. Existing lot coverage is 25.4 percent and proposed lot coverage will be 25.9 percent.

A Plot Plan, dated 1/12/18, stamped by John R. Hamel, Professional Land Surveyor, Existing & Proposed Floor Plans and Elevation Drawings, dated 1/11/18, prepared by Modern Habitat, and photographs were submitted.

On April 5, 2018, the Planning Board reviewed the petition and recommended that Special Permit be granted.

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 steps and construction of a new entry, and construction of a second story addition over an existing nonconforming structure with less than required left side yard setbacks, on a 5,578 square foot lot in a General Residence District in which the minimum lot size is 10,000 square feet, where existing lot coverage is 25.4 percent and proposed lot

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coverage will be 25.9 percent 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 steps and construction of a new entry, and construction of a second story addition over an existing nonconforming structure with less than required left side yard setbacks, on a 5,578 square foot lot in a General Residence District in which the minimum lot size is 10,000 square feet, where existing lot coverage is 25.4 percent and proposed lot coverage will be 25.9 percent, 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 construction plans.

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

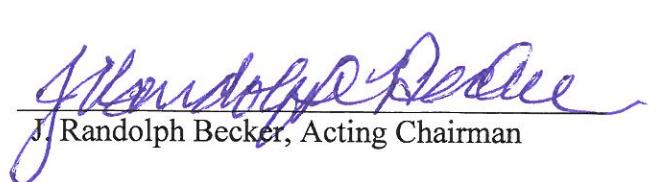
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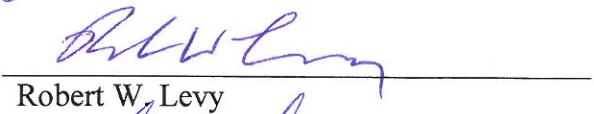
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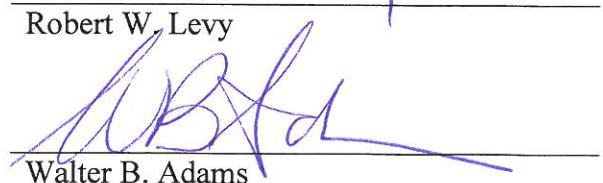
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APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.

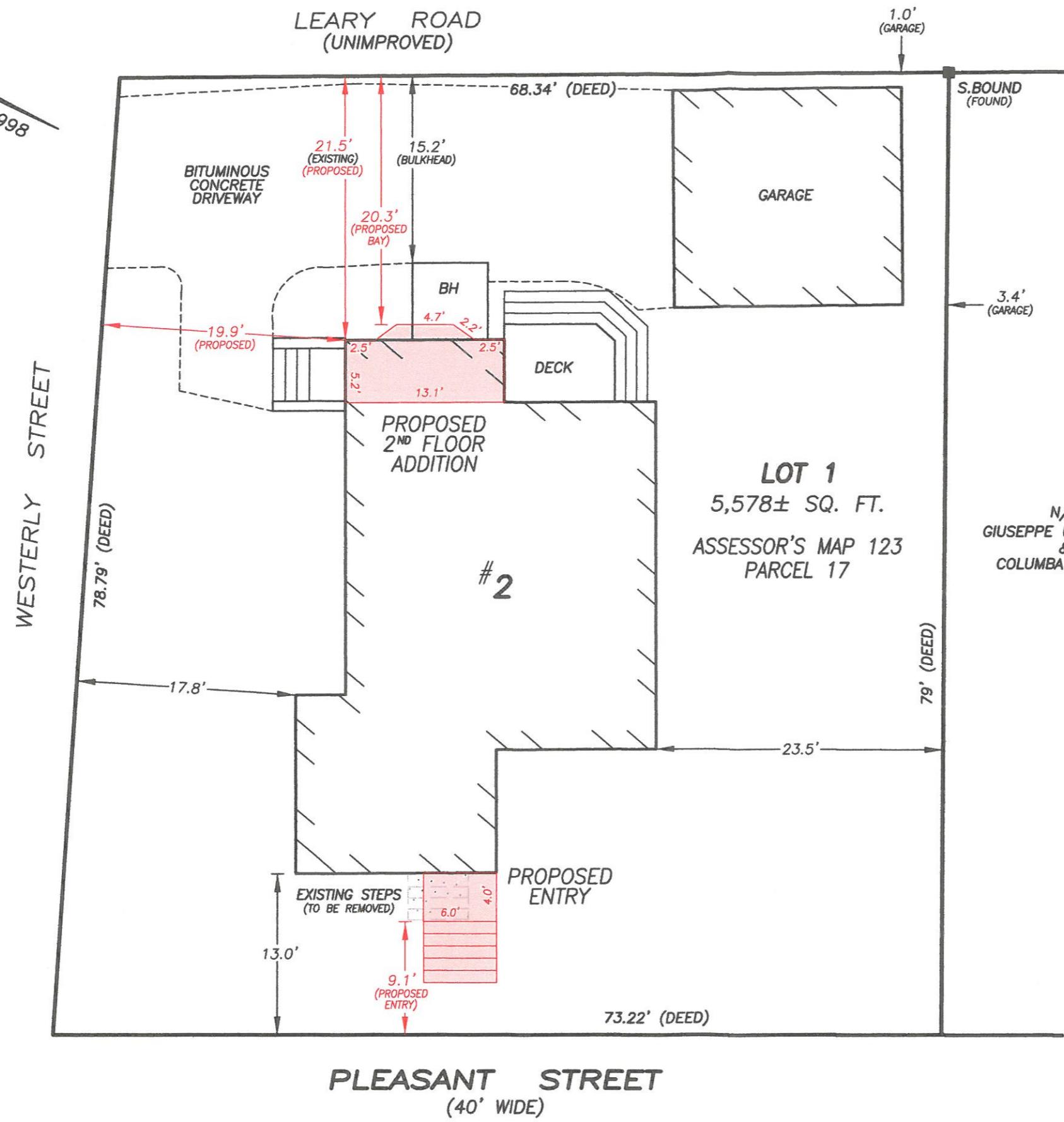

J. Randolph Becker, Acting Chairman


Robert W. Levy


Walter B. Adams

cc: Planning Board
Inspector of Buildings
lrm

PLAN 708 OF 1998



**SITE PLAN
2 PLEASANT STREET
WELLESLEY, MASSACHUSETTS
ANCH = 10 FEET JANUARY 12, 2018**

**SNELLING & HAMEL ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYORS & ENGINEERS
10 LEWIS STREET P.O. BOX 102
LINCOLN, MASSACHUSETTS 01773
(781) 259-0071**

OWNERS OF RECORD:
NIELS P. BOEGHOLM
&
HSIEN C. LIN
BK.21656 PG.59

1 INCH = 10 FEET



N/F
GIUSEPPE U. CORNONI
&
COLUMBA CORNONI

LOT COVERAGE:
EXISTING = 1,415.6 SQ. FT. OR 25.4%
PROPOSED = 1,442.4 SQ. FT. OR 25.9%

NOTE:

PLAN REFERENCES.

- PLAN BOOK 1371 PAGE 47
- PLAN BOOK 1791 PAGE 481
- PLAN 708 OF 1998

I HEREBY STATE THAT THE LOCATION OF THE FEATURES SHOWN
HEREON IS THE RESULT OF A FIELD SURVEY PERFORMED AS OF
DECEMBER 21, 2017, WITH THE USE OF A TOPCON TOTAL STATION.


JOHN R. HAMEL
PROFESSIONAL
LAND SURVEYOR



1-12-18

DATE