

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

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

RICHARD L. SEEDEL, CHAIRMAN
J. RANDOLPH BECKER, VICE CHAIRMAN
DAVID G. SHEFFIELD

LENORE R. MAHONEY
EXECUTIVE SECRETARY
TELEPHONE
(781) 431-1019 EXT. 2208

ROBERT W. LEVY
WALTER B. ADAMS
DEREK B. REDGATE

ZBA 2018-16
Act Development
9 Framar Road

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 Act Development requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing rear entry structure and construction of a two-story addition and deck that will meet setback requirements, on an existing nonconforming structure with less than required front yard and left side yard setbacks, on a 7,852 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, at 9 Framar Road, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

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 were Laith Tashman, Act Development, the Petitioner, and Sami Kassis, P.E. Mr. Tashman said that the proposal is for a two story 600 square foot addition to the rear of the house. He said that existing Total Living Area of 1,450 square feet will increase to 2,050 square feet. He said that the addition will be tucked behind the existing garage that currently extends further to the rear than the main house. He said that the addition will extend the main portion of the home 13 feet but will not be as deep as the existing garage. He said that the front elevation will not change. He said that the addition will comply with setback requirements. He said that the lot is nonconforming, as are some neighboring lots. He said that the addition is reasonable in size and is in harmony with the general intent of regulations and will not be out of character.

A Board member said that the Board received a number of letters from abutters who were quite concerned about this proposal. He said that it is a relatively modest request but in his opinion as an architect, the addition is not very compatible with the building and is not consistent with the types of buildings that are in the neighborhood. He said that it is a very plain, utilitarian addition that shows no details and has large areas of blank walls that will loom over the neighbors below. He said that it will not encroach on any setbacks but it is his opinion that the character of the addition could be more in harmony with the existing building or the entire building could be modified to a different style. He said that the very shallow roof is not very compelling. He said that the door that is shown on the elevation drawing does not seem to go anywhere. Mr. Kassis said that the garage floor is higher than the basement and the door is in between the two floors. A Board member said that there appears to be a concrete slab that goes through two windows and under a door on the plan. He said that it is not clear how it works because from the proposed back elevation, it looks like someone walking out the door would fall down to the dotted line at the bottom of the windows. Mr. Kassis said that the ground comes almost to the door, which is about seven inches above grade.

The Chairman asked about the height of the proposed addition. He said that the property falls off as you go back. He said that in Wellesley the height is defined as the average grade around the building. Mr. Kassis said that the land goes straight back and falls after the addition. He said that there is a patio where the addition will be. Mr. Tashman said that the peak will be 25.6 feet, according to the surveyor.

The Chairman said that the seal on the plans was signed by a structural engineer, not an architect. He said that the project looks like it was designed by a structural engineer. He said that while the Planning Board's review talked about the addition not being visible from the street, the addition is visible from two locations on Seaver Street. He said that because of the blank walls and the boxiness of the design, it will loom over Seaver Street, notwithstanding the trees that are there. He said that the Planning Board talked about potential screening but given the elevation difference, he did not see how they would be able to screen it. Mr. Kassis said that there are evergreen trees at the back. He said that you cannot see the house on the left. A Board member said that the house will come 13 feet closer. He said that the Board cannot legislate how they want the house to look but it can offer judgments about whether a house is designed in a way that minimizes its bulk and size. He said that he does not object to the proposed size of the addition but suggested that the Petitioner consider bringing a designer onto the team to make the design more compatible with the neighborhood, even though there is no requirement for that. He said that the Board received letters from neighbors expressing concerns about the looming of the house, partially due to the topography and the proposed dominating structure.

David Burgess and Elaine Metcalf, 22 Seaver Street - Ms. Metcalf said that their property abuts 9 Framar Road. She said that they are the neighbors directly below and will be the ones who will be most impacted by this project. She said that they are aware that the proposed addition does not add any new nonconforming features or exacerbate the nonconforming structures or the land, but they believe there are special circumstances that apply here that are in conflict with the spirit of the bylaws. She said that their main concern was the topography. She said that there is a difference in elevation of approximately 10 feet from the back of 9 Framar Road to the back of her house, which results in the first floor at 9 Framar Road being at the same level as the second floor at 22 Seaver Street. She said that having the addition come 13 feet closer to the property line will have a fairly imposing impact on their house and the house next door, resulting in a lack of privacy in the backyard and the house itself. She said that it will increase the direct line of sight between 9 Framar Road in the back into the living and eating areas at 22 Seaver Street. She said although the existing height will not change and is within the ordinance, the relative height change due to the topography will cause them to lose a lot of natural light. She said that this is an area where water drainage has been difficult. She said that since moving in, they have taken steps to correct this. She said that they are concerned that they may get more flooding as a result of the proposed construction. She said that the Planning Board raised a question about visibility. She said that it will not be visible from the front of the house but visibility from Seaver Street will be increased. She said that along with themselves, the neighbors at 18 Seaver Street and 11 Framar Road are opposed and have submitted letters. She said that they share the view that the addition is not aesthetically pleasing. She said that they are concerned about the lack of architectural details, including the windows and siding. She said that she spoke with the developer on one occasion and was told that they would be removing one mature tree from the front corner of the house. She said that she asked about the evergreen trees at the rear but the developer did not know the answer to that and has not gotten back to her about it. She said that from the trunk to the back of the addition would be approximately 10 to 15 feet. She said that all branches on that side will have to be removed for clearance or the trees will have to be removed completely, which will dramatically reduce or remove any screening. She said that the developer told her that no new

landscaping is planned. She said that there is a retaining wall on their side of the fence due to the topography and they do not think that they could plant anything substantial enough to provide screening from their side of the property line. She said that they could not build a fence high enough to change the line of sight. She said that in addition to theirs, seven letters from neighbors who are opposed to this plan were submitted to the Board.

Mr. Burgess submitted four pages of photographs that were taken by his neighbor, Richard Page. He said that if you were to draw a straight line from 9 Framar Road to 22 Seaver Street, it would come out to the bottom of the second floor windows, which gives you an idea of how much higher the house already is. He said that he measured 13 feet out from the corner to show where the addition will go. He said that the grade gets steeper at the corner. He said that standing where the addition will be and looking down onto his property, it will overlook their kitchen and dining room and will afford them no privacy. He said that the view from Seaver Street is not screened by the trees. He said that if the roof is extended 13 feet towards their property, it will dramatically impact the morning light. He said that even though these houses may be distanced appropriately, the change in grade makes one loom over the other.

Mr. Tashman submitted a letter with an attached map of the surrounding neighbors showing Total Living Area (TLA) on lots with less than 10,000 square feet. He said that four lots are less than 10,000 square feet. He said that one house has less but the rest of the neighboring houses have at least 2,000 square feet of TLA. He said that this is the smallest and the only exception. He said that he is just asking to add 600 square feet to make it consistent with the neighborhood in terms of size.

A Board member said that it is a small lot. He said that he had not heard any concern that the addition will be too large square footage wise. He said that the concern has been more about how it is formed and the impact. He said that its charge and the legal standard for a nonconforming lot is for the Board to make a determination that the proposed renovation will be no more detrimental to the neighborhood. He said that although the decision is up to the Board, the contiguous abutters and abutters to abutters have strong feelings that this is more detrimental.

The Chairman said that when he looked at the statistics for the neighborhood, he included Framar Road and Seaver Street from 2 through 26. He said that 9 Framar Road is the smallest lot in the neighborhood and the only one that comes close is 22 Seaver Street at 8,700 square feet. He said that the average living area in that neighborhood is just over 2,700 square feet, so this TLA will be less than the neighborhood average. He said that because of the topography, the blank walls loom over the rest of the neighborhood. He discussed continuing the hearing so that the Petitioner can come back with a revised design that addresses the concerns. A Board member said that a second floor that does not extend out as far might be less impactful. Mr. Tashman said that they are willing to resolve certain concerns of the Board and the neighbors. He said that the existing kitchen is too small and they want to expand it and add a room upstairs. He said that they would like to make this a three bedroom home.

Jan Wright, 21 Seaver Street, submitted a letter to the Board. She said that she previously lived at 22 Seaver Street and is very familiar with this house and the looming of it. She asked if there was anything that Mr. Tashman can do in his redesign to make the deck a little less imposing because there will be no privacy for someone in the yard at 22 Seaver Street when there is someone on the deck at 9 Framar Road.

The Board encouraged the Petitioner to speak to the abutters and show them the plans.

The Board voted unanimously to continue the hearing to May 3, 2018.

May 3, 2018

Presenting the case at the hearing were David Himmelberger, Esq., and Laith Tashman, Act Development.

Mr. Himmelberger said that Mr. Tashman reached out to him in the past few days to review the original proposal and the changes that were made since the April 5th hearing. He said that the revised plan significantly addresses the three primary concerns that the Board and the neighbors raised. He said that his client met with a number of neighbors about a week ago to review the changes. He said that the concern about the lack of architectural integrity of the addition was addressed in a revised plan. He said that drainage will be handled by roof leaders running from the new roof structure into a drywell that is shown on the revised plot plan. He said that there may be some misunderstanding with regard to any intention to take down trees. Mr. Tashman distributed revised plot plans to the Board members. Mr. Himmelberger said that the revised plot plan shows the drywell and a reduction in the size of the deck at the rear. He said that his client is committed to installing a row of arbor vitae along the common property line abutting the Seaver Street property to further provide screening. He said that when looking at the existing photos from 22 Seaver Street, one's eye goes to the bare cement foundation. He said that the less attractive exposed bare masonry foundation will no longer be visible with the arbor vitae. He said that while there may be some neighbors who are still in opposition, a number have become supportive of the plan.

Mr. Himmelberger said that it will be a modest addition that is no taller than the existing structure with a relatively low profile. He said that the revision to the rear, particularly the second floor with the Dutch gambrel treatment with the arched vent above the window and shutters on the windows vastly improves the overall appearance.

A Board member said that he appreciated that Mr. Tashman listened to the Board and the neighbors. He said that the Board received two letters from neighbors who still think that it is too big. He said that this is one of the smallest lots and houses in the neighborhood. He said that the additional space still keeps it within the framework of Large House Review. He said that relocating the door on the rear of the addition to the side where the stairs will be works better. He said that most of his concerns have been addressed.

David Burgess and Elaine Metcalf, 22 Seaver Street - Mr. Burgess said that the two main concerns that they previously expressed continue to be there, the looming nature of a two story structure and that it will come 13 feet closer to their home. He said that the design is much more attractive and they appreciate that improvement. He said that the topography is such that it will loom way over their house. He said that theirs is the second smallest lot in the neighborhood and 9 Framar Road is the smallest. He said that the two smallest lots are next to each other, which has the effect of these homes appearing to be closer together. He said that they met with Mr. Tashman last week and asked him to consider putting the hearing off so that he could address their concerns. He said that his understanding is that the Board members would not be sitting together for several months, so it was important for Mr. Tashman to go ahead tonight. He said that they recognize that Mr. Tashman and his partners want to make a house that is as large as is allowed but the size of the lot does not support a house of this size with a two story addition coming closer to them. He said that since sending a letter to the Board, they met with an arborist who

works with the town. He said that the existing hemlock trees provide some screening. He said that the arborist pointed out that the branches facing the addition will have to come off because they will be too close to the addition and that is likely to impair these trees. He said that unless great precautions are taken, construction vehicles going over the land are likely to compact the soil and damage the roots, which could kill the trees. He said that the arborist pointed out that although the foundation will be coming out 13 feet, they will have to dig a bigger hole in order to set it, which could damage the tree roots. He said that the arborist thinks that it is likely that the hemlocks, even though they are healthy now, may not survive more than a couple of years and then that screening will be gone. He said that it was good to hear that there will be some arbor vitae going in. He asked if that can be made a condition or if there can be something binding to ensure that it actually happens. He said that they recognize that they will have to compromise on privacy but some of that can be ameliorated with the screening. He asked that the Board encourage Mr. Tashman to come back with a design that only has a one story addition, which will at least address the looming nature of this. He said that is a big concern for the whole neighborhood. He asked that the Board to deny the permit if the Petitioner insists on proceeding at this hearing.

Ms. Metcalf said that she met with the arborist this morning. She said that with careful root pruning and some sort of fertilizing, conservation of the trees may be possible. She said that there are two mature maples on the side that will be preserved. She said that the arborist was concerned about compression of the soil by heavy machinery unless measures were taken such as steel plates. She said that none of this will trigger the tree bylaw because of the size. She asked that measures that are normally enforced under the tree bylaw for critical root zones be brought into this decision because of the difference in topography of the two properties.

A Board member asked if Mr. Tashman discussed with the builder how they plan to get the concrete in. He asked if they will be using a pump. He said that it seems hard to believe that they will be able to get a concrete truck into the backyard. He said that the lot slopes at the back and there is a retaining wall. He said that there is 9' 6" feet between the garage and the side property line. Mr. Himmelberger said that his client wants to protect the trees. He said that he would accept a condition that they put steel plates down. He said that his client is also willing to accept a condition that states that if any of the hemlocks on the property line fail, they will be replaced with equivalent arbor vitae to complete the screening.

A Board member said that the original plot plan shows a dimension of 18.3 feet from the proposed addition to the rear lot line and the plot plan that was distributed to the Board members tonight shows that dimension at 17.7 feet. Mr. Himmelberger said that the prior plot plan had an inaccurate width of 21 feet where the design plan showed 23 feet. The Board confirmed that the original plot plan that was stamped and signed by a surveyor is wrong and the plot plan that was submitted tonight is not stamped or signed but has the correct dimensions.

Mr. Himmelberger said that the distance between the two structures with the addition will be 40 feet. He said that there are numerous instances in town where homes abide by a 10 foot rear yard setback back to back and those people only enjoy 20 feet between.

The Chairman said that the Board had concerns about the looming nature and size of the addition, as well as differences in the plot plan. He said that the existing house already has a looming nature. He questioned whether the proposed addition will materially impact the looming nature of the site. He said that it will be a little bit closer, will be as tall as what is there but not as wide. He said that this is the

smallest lot and house in the neighborhood and the addition that they are proposing is not particularly large in comparison to others that the Board has seen, even given the size of the lot. He said that conditions for drainage are now shown in the plan. He said that there is no mechanism in the bylaw for the Board to condition trees other than protecting them during construction. A Board member said that if the Board is deciding whether this will be more detrimental to the neighborhood, it could insert a condition that requires replacement at a certain size, given the idea that the trees provide an important screening element. He said that if the Applicant is volunteering to replace the trees if they are in dire straits, and he is represented by counsel, he can create a mechanism to let the neighbors know who to contact, and the Board will rely on that being done. Mr. Himmelberger said that it is also to the benefit of the Applicant to have screening. Mr. Tashman said that he met with the neighbors and told them that he would put screening on the right and rear sides.

Statement of Facts

The subject property is located at 9 Framar Road, on a 7,852 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, with a minimum front yard setback of 29.4 feet, and a minimum left side yard setback of 9.6 feet.

The Petitioner is requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing rear entry structure and construction of a two-story addition and deck that will meet setback requirements, on an existing nonconforming structure with less than required front yard and left side yard setbacks, on a 7,852 square foot lot in a Single 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.

A Plot Plan, dated 12/13/17, revised 5/8/18, stamped by Michael P. Clancy, Professional Land Surveyor, Existing & Proposed Floor Plans and Elevation Drawings, dated 1/20/18, revised 4/18/18 & 5/8/18, Drywell Detail, dated 5/8/18, prepared by Design by Sami LLC, and photographs were submitted.

On April 5, 2018, the Planning Board reviewed the petition and recommended that a 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 demolition of an existing rear entry structure and construction of a two-story addition and deck that will meet setback requirements, on an existing nonconforming structure with less than required front yard and left side yard setbacks, on a 7,852 square foot lot in a Single 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, as it shall neither increase an existing nonconformity nor create a new nonconformity.

Therefore, a special permit is granted, as voted unanimously by this Authority at the Public Hearing, for demolition of an existing rear entry structure and construction of a two-story addition and deck that will

meet setback requirements, on an existing nonconforming structure with less than required front yard and left side yard setbacks, on a 7,852 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, subject to the following conditions:

1. A revised plot plan that has been signed, sealed and dated by a registered land surveyor shall be submitted and shall correct the dimension of the proposed addition.
2. The Drywell Detail Plan, dated 5/8/18 shall be incorporated in this decision.
3. The arbor vitae that is proposed to provide screening between 9 Framar Road and the abutting properties on the rear property line, including 18 and 22 Seaver Street, shall be included as conditions of approval. The arbor vitae shall be a minimum of eight feet tall.
4. The contractor shall make all efforts to provide metal plates or other methods to support the weight of any construction vehicles that will come within the umbrella of the tree roots.

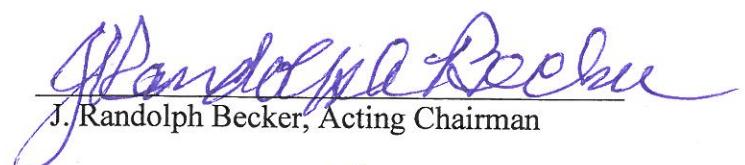
The Board recommends that the existing trees be protected in a like manner as if they were jurisdictional under the tree bylaw by putting fencing around them to protect their roots.

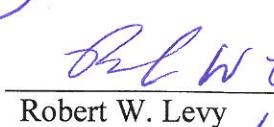
The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed construction plans.

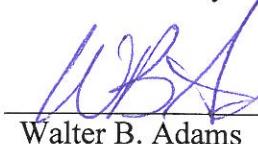
If construction has not commenced, except for good cause, this Special Permit shall expire two years after the date time stamped on this decision.

ZBA 2018-16
Petition of Act Development
9 Framar Road

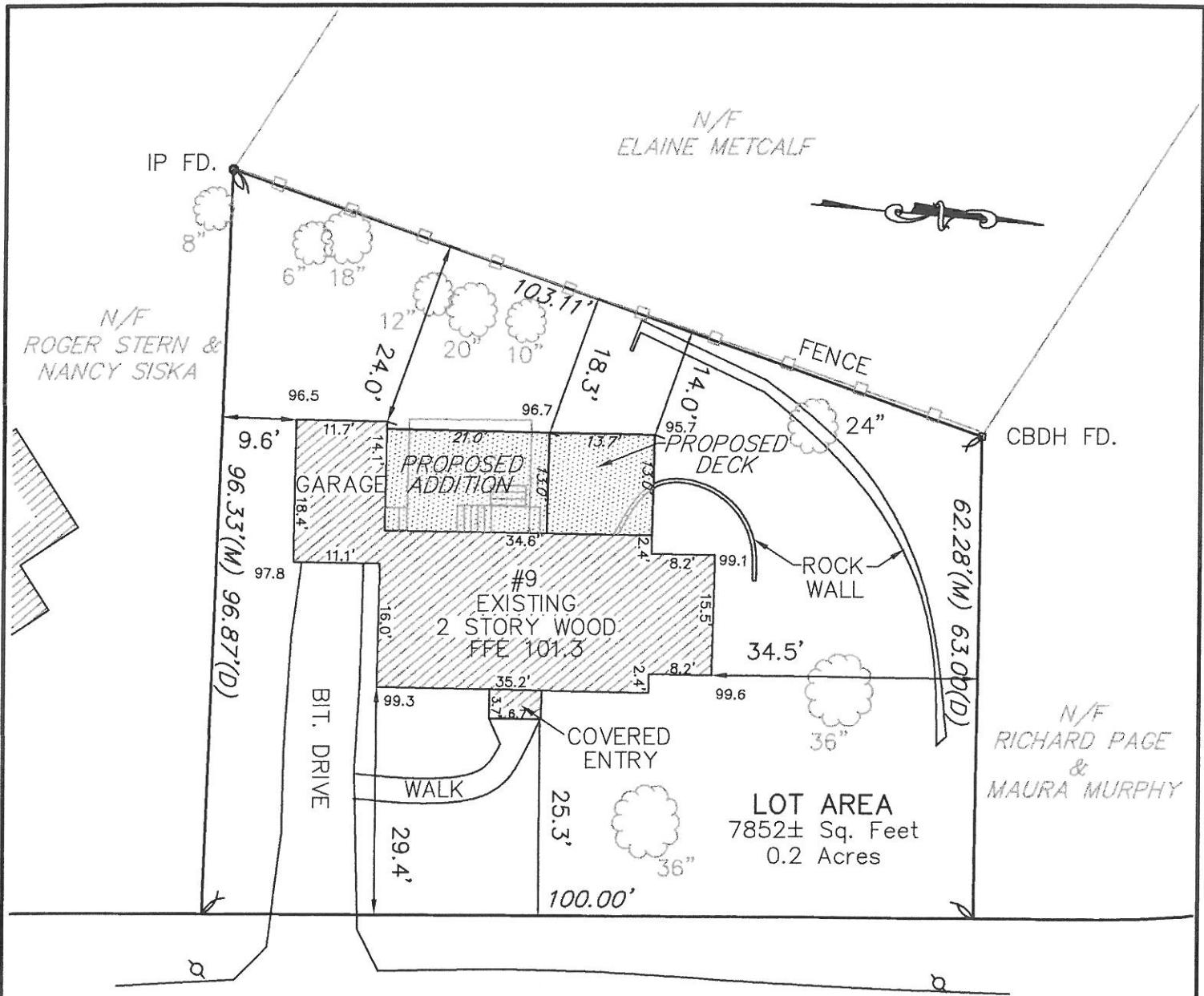
APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.


J. Randolph Becker, Acting Chairman


Robert W. Levy


Walter B. Adams

cc: Planning Board
Inspector of Buildings
lrm



PREPARED FOR:

ACT DEVELOPMENT, LLC
95 UNIVERSITY AVENUE UNIT 2129
WESTWOOD, MA 02090

NOTES:

1. ZONING CLASSIFICATION - SR10
2. LOCUS DEED:
NORFOLK COUNTY REGISTRY OF DEEDS BOOK 35567 PAGE 392
3. PLAN REFERENCES:
NORFOLK COUNTY REGISTRY OF DEEDS PLAN 544 OF 1924
4. ASSESSORS PARCEL ID: 76-44

LOT COVERAGE (EXISTING) = 1101 S.F. = 1101/7852 = 14.0%

LOT COVERAGE (PROPOSED) = 1101 + 432 = 1533 S.F. = 1533/7852 = 19.5%

PROPOSED PEAK OF ADDITION TO AVERAGE GRADE 25.6'



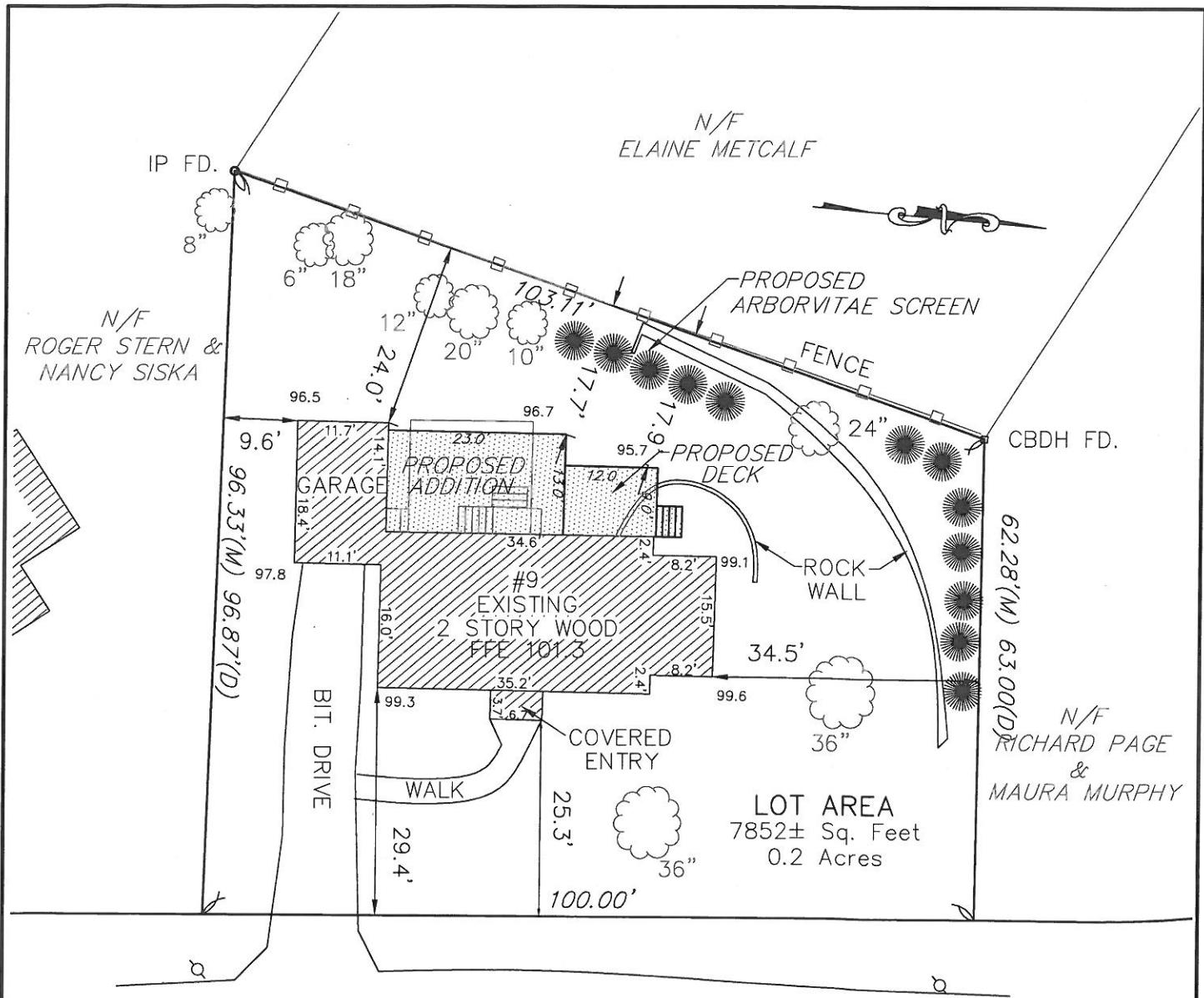
PLOT PLAN

FOR
9 FRAMAR ROAD

IN
WELLESLEY, MASS.

SCALE: 1"=20' DECEMBER 13, 2017

C & G SURVEY COMPANY
37 JACKSON ROAD
SCITUATE, MA. 02066
1-877-302-8440



PREPARED FOR:

ACT DEVELOPMENT, LLC
4 PLEASANT STREET SOUTH
SUITE 1
SOUTH NATICK, MA 01760

NOTES:

1. ZONING CLASSIFICATION – SR10
2. LOCUS DEED:
NORFOLK COUNTY REGISTRY OF DEEDS BOOK 35567 PAGE 392
3. PLAN REFERENCES:
NORFOLK COUNTY REGISTRY OF DEEDS PLAN 544 OF 1924
4. ASSESSORS PARCEL ID: 76-44

LOT COVERAGE (EXISTING) = 1101 S.F = 1101/7852 = 14.0%

LOT COVERAGE (PROPOSED) = 1101 + 406 = 1507 S.F = 1507/7852 = 19.2%

PROPOSED PEAK OF ADDITION TO AVERAGE GRADE 25.6'



PLOT PLAN

FOR
9 FRAMAR ROAD

IN
WELLESLEY, MASS.

SCALE: 1"=20' DECEMBER 13, 2017

C & G SURVEY COMPANY
37 JACKSON ROAD
SCITUATE, MA. 02066
1-877-302-8440

REVISED MAY 8, 2017