

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

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

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1200 JUN 21 2018
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ZBA 2018-40

Appeal of Charles & Beth Dublin
15 Colgate Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, June 7, 2018 at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the Appeal of Charles & Beth Dublin pursuant to Section XXIV-C of the Zoning Bylaw of a determination by the Inspector of Buildings that the 500 Foot Rule was not applied correctly, in accordance with plans submitted on March 21, 2018 and March 29, 2018. The property is located at 15 Colgate Road.

On May 2, 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 Appeal were Jacob Gadbois and Charles Dublin, the Appellant. Mr. Gadbois said that the request is to review the decision of the Building Inspector to deny approval because a corner lot within 425 feet of 15 Colgate Road that has a front yard setback of 35.4 feet was used to determine the front yard setback. He said that the proposed porch at 15 Colgate Road will have a 41 foot front yard setback. He said that they were denied due to the fact that the corner lot has a different address. Mr. Dublin said that it has a different street address even though it is on the same side of the street and is within 500 feet.

The Chairman read an excerpt from Section XIX, of the Zoning Bylaw. He said that the Building Inspector looks at houses within 500 feet and whichever house is closest to the street sets the front yard setback for the house being reviewed, provided that it is at least 30 feet. He said that the Applicant is looking to use an address on an intersecting street as frontage. He said that a corner lot has two front yards. He said that a dimension is shown on the plan to the corner of Pembroke Road. Mr. Dublin said that it is a little closer than 35.4 feet to Pembroke Road and a little further from Colgate Road.

Michael Grant, Building Inspector, said that the 500 Foot Rule has been in effect in the town since 1939. He said that it is very vague. He said that part of his job is to maintain the intent of the bylaw. He said that his interpretation has also been used by previous Building Inspectors. He said that with corner lots, the 500 Foot Rule will apply to one side of the lot but not the other. He said that the 500 Foot Rule does not turn a corner. He said that it stops at the intersecting or entering street. He said that because the house on the corner has a Pembroke Road address, the 500 Foot Rules only applies to the Pembroke Road side. He said that using the Pembroke Road setback would have allowed the house at 15 Colgate Road to be placed closer than other houses on Colgate Road, which could change the streetscape on Colgate Road. He said that a plan was provided to the Building Department through emails that was not a certified plot plan. He said that 15 Colgate Road has an existing front yard setback of 45 feet. He said that the other houses on Colgate Road have front yard setbacks of 50 and 50.5 feet. He said that 15 Colgate Road is the closest to the street. The Board confirmed that Mr. Grant based his determination on address, not on front

door. Mr. Grant said that there is nothing in the bylaw that addresses corner lots for the 500 Foot Rule. The Chairman said that it is his understanding that the 500 Foot Rule was originally intended for infill lots so that the streetscape would be maintained. He said that as there are few infill lots left in Wellesley and the bylaw has become more germane for renovations such as this one.

Mr. Grant said that he told the Applicant that he would need a variance because he would be creating a new nonconformity.

The Board asked if 50 feet is what Mr. Grant concluded is the proper setback. Mr. Grant said that the existing house at 15 Colgate Road has a 45 foot front yard setback. He said that the front entry porch is in excess of what is allowed under the exemption in the bylaw, so they can use that for their setback. He said that they happen to be the closest house. He said that the closest house gets punished under the 500 Foot Rule because you need a variance to come closer to the street.

The Board asked if the proposed addition is entirely front porch. Mr. Dublin said that the front porch is the issue involved with the 500 Foot Rule.

Mr. Dublin asked if there is any precedence for the 500 Foot Rule to be broken. The Board said that it is a bylaw of the town that it has always enforced. The Board said that each case is unique and the Board does not base its decisions on precedence.

Mr. Dublin said that he agrees with the concern about pushing houses out and affecting the appearance of the street. He said that they want the street to look as good as possible and think that this will contribute to that. He said that one of the arguments that he heard was that if they extend out, others neighbors will want to extend out. The Chairman said that they would have the right to extend out. Mr. Dublin said that it would be a three foot difference. He said that he sees large houses go up all the time that seem to break all of the rules. He said that they are monsters in relation to the lot. He said that this seems to be a minor request in the grand scheme of things. He said that the subject house on Pembroke Road has almost no yard. He said that it is a question of fairness. The Chairman said that the Board would assume that the houses either comply with Zoning or had appropriate relief granted. He said that what is before the Board is this petition and that it what the Board will address.

A Board member said that in this case, if there was no 500 Foot Rule, the setback could be 30 feet where all of the other houses have a 50 foot setback. The Chairman said that there have been several matters that have come before the Board over the years relative to this rule. He said that several years ago there was a warrant to amend the bylaw but it did not pass at Town Meeting. He said that the Board is bound by the bylaw and the purpose is such that no house will change the streetscape by being substantially closer than houses in the vicinity.

A Board member said that 15 and 11 Colgate Road look similar and may have been built around the same time. He said that they were slightly closer to the street than the adjacent properties on either side. He said that there was nothing in the record to show that relief was granted for the front porch. He said that the porch was probably part of the original house or was found to be acceptable in terms of Zoning compliance. He said that whether the bylaw was to give guidance to infill on vacant lots or recognition that once a streetscape is established it should not be allowed to change dramatically, allowing this porch, given its size, would not comply with the 500 Foot Rule.

A Board member asked Mr. Grant if he ever used a corner lot in relation to the 500 Foot Rule. Mr. Grant said that if the corner lot had a Colgate Road address, he would use it. The Board member asked if Mr. Grant makes any Building Inspector determinations if it is a closed versus an open porch. Mr. Grant said that a porch is a structure and this does not meet any of the exemptions under the front yard definition.

The Chairman confirmed that the determination is based on the address, not the orientation of the house. Mr. Grant said that the bylaw does not mandate where the front door faces. He said that there are a few instances in town where the front door does not face the street. He said that he applies the 500 Foot Rule to the street address. He said that people have changed their address to get an advantageous 500 Foot Rule on a corner lot. He said that there has to be some mechanism to maintain the streetscape. He said that the bylaw is silent on corner lots in many ways. He said that if the 500 Foot Rule applied to both sides of corner lots, many of them would be unbuildable. He said that most houses on corner lots are usually closer to one street than the other. He said that when he first became a Building Inspector for the town, he drove around town and looked at old plot plans to get a sense of what happened in the past to maintain consistency. He said that the 500 Foot Rule does not turn a corner. He said that it stops at the intersecting street. He said that the intent of the bylaw was to maintain streetscape, which is what he tried to do for Colgate Road by not allowing the Pembroke Road address to be used.

Statement of Facts

The subject property is located at 15 Colgate Road, in a 20,000 square foot Single Residence District.

The Appellant is appealing a determination by the Inspector of Buildings that the 500' Rule was not applied correctly, in accordance with plans submitted on March 21, 2018 and March 29, 2018.

Submittals from the Appellant

- Emails, dated 3/29/18 & 4/4/18, to Jacob Gadbois, from Michael Grant, re: 15 Colgate Appeal
- Emails, dated 3/21/18 & 3/29/18, to Michael Grant, from Jacob Gadbois, re: 15 Colgate Appeal
- Application, dated 5/1/18
- Vicinity Plan, dated 3/27/18, prepared by Land Planning, Inc.
- Cover, A-1, dated 3/21/18, prepared by Masters Touch
- Existing Conditions Plan, A-2, dated 3/21/18, prepared by Masters Touch
- Proposed Plan, A-3, dated 3/21/18, prepared by Masters Touch

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Submittals from Michael Grant, Local Building Inspector

- Emails, dated 3/29/18 & 3/21/18, from Jacob Gadbois, to Michael Grant, re: 15 Colgate Appeal
- Email, dated 3/29/18, from Michael Grant, to Jacob Gadbois, re: 15 Colgate Appeal
- Vicinity Plan, dated 3/27/18, prepared by Land Planning, Inc.
- Cover, A-1, dated 3/21/18, prepared by Masters Touch
- Existing Conditions Plan, A-2, dated 3/21/18, prepared by Masters Touch
- Proposed Plan, A-3, dated 3/21/19, prepared by Masters Touch
- Google Map Colgate Road

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- Partial As-Built, 39 & 42 Pembroke Road, dated 12/19/17, prepared by Land Planning, Inc.
- As Built Certification Form, 27 Pembroke Road, dated 4/5/06
- As Built Certification Form, 23 Pembroke Road, dated 4/23/08
- Building Permit Application, 15 Colgate Road, dated 9/27/17, stamped by William D. Halsing, Professional Land Surveyor
- Emails from Jacob Gadbois, to Michael Grant, dated 4/4/18 & 3/29/18, re: 15 Colgate Appeal

On June 4, 2018, the Planning Board review the appeal and recommended that the determination of the Building Inspector be upheld.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing.

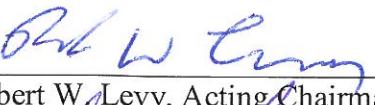
The appeal of the determination by the Inspector of Buildings that the 500 Foot Rule was not applied correctly, in accordance with plans submitted on March 21, 2018 and March 29, 2018 is denied and the determination of the Inspector of Buildings is upheld.

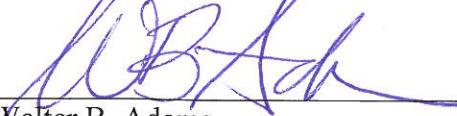
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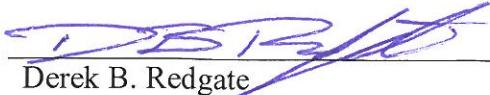
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15 Colgate Road

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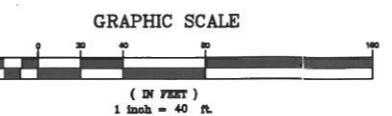
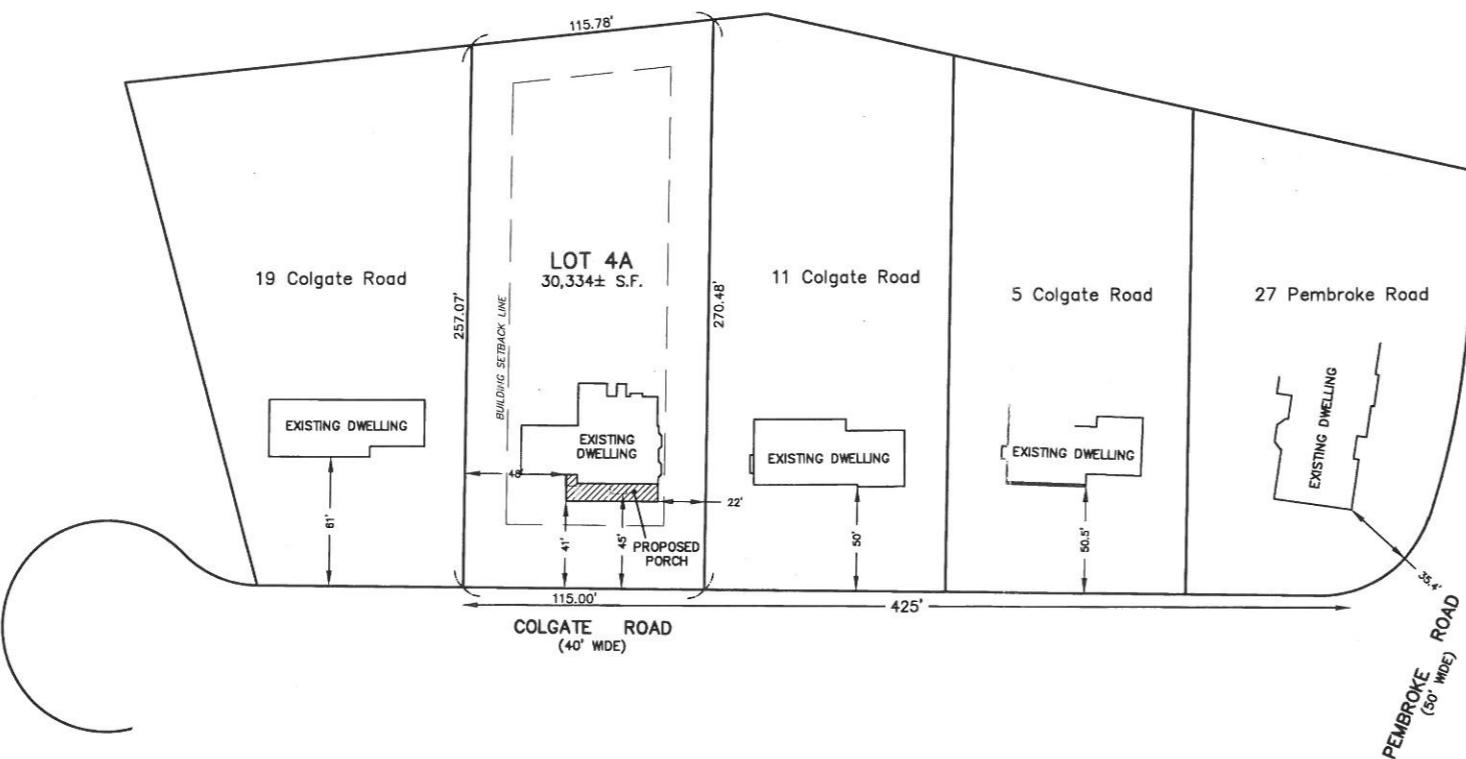
APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.


Robert W. Levy, Acting Chairman


Walter B. Adams


Derek B. Redgate

cc: Planning Board
Inspector of Buildings
lrm



THIS PLAN WAS COMPILED FROM OTHER MAPS, RECORD RESEARCH OR OTHER SOURCES OF INFORMATION. IT IS NOT TO BE CONSTRUED AS HAVING BEEN OBTAINED AS THE RESULT OF A FIELD SURVEY, AND IS SUBJECT TO SUCH CHANGE AS AN ACCURATE FIELD SURVEY MAY DISCLOSE.

Vicinity Plan
Located at
Colgate Road
Wellesley, MA
Prepared for
Masters Touch

REVISIONS			
No.	Date	Design	Checked
1			
2			
3			
4			
5			
6			

Field By: BH 12/17
Designed By: WDH 3/18
Drawn By: WDH 3/18
Checked By: WDH 3/18



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Date	Sheet No.
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Job No.	1