



ZONING BOARD OF APPEALS

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ZBA 2017-18

Petition of 3 Strathmore Road LLC
3 Strathmore Road

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Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, March 2, 2017, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of 3 Strathmore Road LLC requesting a Special Permit/Finding pursuant to the provisions of Section XVI, Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing nonconforming structure with less than required side yard setbacks, construction of a two-story structure with less than required side yard setbacks, and installation of two air conditioning condensers with less than required front yard setbacks, on a 7,526 square foot corner lot in a Single Residence District in which the minimum lot size is 10,000 square feet, in a Water Supply Protection District, at 3 Strathmore Road, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On , 2017, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

WITHDRAWN WITHOUT PREJUDICE

Presenting the case at the hearing was David Himmelberger, Esq., representing 3 Strathmore Road LLC, the Petitioner. He said that the request is for a special permit to raze and rebuild a single family dwelling. He said that it is a pre-existing nonconforming lot due to inadequate lot size at 7,526 square feet in a district in which the minimum lot size is 10,000 square feet. He said that the existing structure is also nonconforming due to setback issues. He said that the left side yard setback to the detached garage is 8.1 feet and what would nominally be termed a rear yard setback but is treated as a side yard setback here is 9.8 feet, where 20 feet are required.

Mr. Himmelberger said that the Applicant has proposed to construct a two-story single family home that will respect the 20 foot side yard setback on the left and the 30 foot front yard setback. He said that they will increase the setback at the rear from 9.8 feet to 10.6 feet. He said that there will be an intensification of the nonconforming structure as it will be a larger replacement dwelling. He said that they will eliminate the nonconforming garage while slightly improving the rear/side yard setback. He said that they believe that the design of the house is attractive and seeks to minimize mass with the roof treatment and the windows over the garage. He said that there is an issue with respect to two air conditioning condensers to be placed on the Weston Road side of the house. He said that the purpose behind the Zoning Bylaw that condensers not be placed in the setback is to avoid disturbing neighbors. He said that it is the best side to place them because it abuts Weston Road and would be tucked against the chimney bump out.

Mr. Himmelberger said that the lot is shaped in such a way that it is virtually impossible to conform with all of the setbacks because the lot is only 65 feet deep. He said that with the 30 and 20 foot setbacks, only a 15 foot deep house would comply. He said that if the lot was square, you could build a larger house with a compliant footprint.

Mr. Himmelberger said that the Planning Board is of the opinion that you cannot raze and rebuild a noncompliant structure due to abandonment issues. He said that he believes that this Board disagrees with that. He said that he cited in his cover letter a similar case at 6 Fairbanks where this Board granted similar relief last summer. He said that the Board allowed an improvement of the setbacks and did not impose a requirement that all of the setbacks be compliant. He said that they are seeking similar relief here. He said that there will be improvement of the side and rear yard setbacks, albeit with a two-story garage. He said that the house that is closest in proximity to it on Weston Road has a peak that is approximately 26 feet high. He said that the eaves on the proposed house are less than that and the total height of the house will be approximately 34 feet. He said that the other house on Weston Road is about six feet to the property line. He said that the way that the proposed house will be situated will not have significant impact on it. He said that the Petitioner is requesting a finding that the proposed structure shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Mr. Levy asked which Board members sat at the hearing for 6 Fairbanks. Mr. Himmelberger said that it was Mr. Becker, Mr. Levy and Mr. Redgate. Mr. Levy said that the Board usually requires compliant setbacks for structures that are torn down and rebuilt. Mr. Redgate said that 6 Fairbanks was a little different from this. Mr. Himmelberger said that the Board allowed less than required side yard setbacks at 6 Fairbanks. Mr. Levy asked if Mr. Himmelberger knew of any other cases where the Board allowed tear down and rebuild with noncompliant setbacks. He said that the Board typically requires compliant setbacks or the petition goes to a variance. Mr. Himmelberger said that the rationale that drove that thinking was that there was an abandonment by virtue of the tear down. He said that he was able to present at the Fairbanks case the fact that abandonment is a concept that talks about some sort of disuse over a period of time. He said that there are no cases that speak to abandonment occurring when there has been a tear down as part of a permitting process. Mr. Levy said that there was a situation a number of years ago where the property owner tore down the house and then came to the Board for a permit. Mr. Himmelberger said that situation is different. He said that it is different from asking for the permit before tearing the house down.

Mr. Levy said that the Board tries to get properties as conforming as possible. He said that this proposal is to clear cut the lot to build a house that will not meet setback requirements. He said that it is a small lot. He said that there may be no other way to site the new house. He discussed the possibility of a variance. He said that there may be an argument for the shape of the lot. Mr. Himmelberger said that he believes that, under the bylaw and case, there can be a finding that there is an intensification of the nonconformity in terms of the size. He said that the nonconformities here are being reduced in terms of the side yard setbacks. Mr. Levy said that the bulk of the house will not be reduced. He said that it is one thing to have a small house that violates setbacks versus a large house that violates setbacks. He said that there is a lot more square footage of house that is violating the setback than currently exists. Mr. Himmelberger said that one of the setbacks will be improved.

Mr. Levy said that he does not like setting precedents that come back to haunt him. He said that he did not remember the case or the circumstances at 6 Fairbanks. Mr. Redgate said that it was different

circumstances. He said that it had grading and sloping issues and was very narrow. He said that it was a much smaller home. He said that this is a very large home on a very small lot. Mr. Himmelberger said that the difference was that 6 Fairbanks was that the setbacks were maintained.

Mr. Redgate asked if the setback for the abutter on Weston Road is six feet. Mr. Himmelberger said that it is less than 10 feet.

Mr. Levy asked if this will be a spec house. Mr. Himmelberger said that the builder is building it to sell it. He said that the Applicant owns the house.

Mr. Sheffield said that there are a few minor architectural tweaks that might help. He said that it is a large house on a very constrained site. He said that the depth from Strathmore to the side lot line is only 65 feet. He said that it is a four bedroom house. He said that the only architectural suggestion that he could make would be on the side elevation at the garage that would cause an encroachment into the front yard setback of a modest couple of feet. He said that it would be something to break up the façade. He said that it is a very big house.

Brett DeMayo, owner, 3 Strathmore LLC, asked if it would help if they reduce the dormer size and reduce the square footage in the third floor and lower the roof line down on the right side of the house. He said that they could remove the dormers where the windows are at the center of the house and bring the roof line down on the right side and fix the proportion. Mr. Sheffield confirmed that Mr. DeMayo was discussing the view shown on Plan A1.0 from Strathmore Road. He said that the change that Mr. DeMayo discussed in conjunction with an offset for the garage and a major break in the roof line at the rear façade might help but it would cause an encroachment into the front yard setback by a few feet. He said that it would totally change the scale of the house. He said that the garage on the right hand side could pushed toward Avon Road to enhance the scale of the house architecturally, along with the changes that Mr. DeMayo suggested for the dormers. Mr. DeMayo said that the garage is set back on the Strathmore side of the house. He said that it is in line at the rear of the house. Mr. Sheffield said that there is only one dimension on the site plan. Mr. Himmelberger said that Floor Plan 2.0 shows that façade broken up with recessed entry. Mr. DeMayo said that the entry is set back from the front of the house.

Mr. Levy said that he was not sure that the Board can get to design issues. He said that the house will be almost three times as large. He said that it will go from one to two stories. He said that it is a small lot. He said that he was not convinced that a special permit could be granted to allow a tear down and rebuild with nonconforming setbacks. He said that it will go from a 1,200 square foot house to a 3,200 square foot house. Mr. DeMayo said that it will be 3,200 square feet if they keep the roof line and the third floor space the same. He said that it would go down to 2,500 square feet with the suggested changes. He said that the existing house is a 1.25 elevation. Mr. Himmelberger said that the depth of the lot is 65 feet. He said that the Zoning Bylaw says that if there is an intensification, there needs to be a finding. He said that the bylaw does not require that every new construction on a nonconforming lot be dimensionally compliant, nor has this Board held that in the past.

Mr. Redgate said that this greatly intensifies a nonconformity. He asked about the bump out along the rear elevation. Mr. Sheffield said that it does not have a foundation and can extend out two feet. Mr. DeMayo said that it is two feet. He said that is where the kitchen counter is. Mr. Redgate said that it will

put the kitchen window another two feet closer to the property line. Mr. Sheffield said that although the bylaw does allow it, it may not be advisable.

Mr. Sheffield asked if there was anyone present at the public hearing who wished to speak to the petition.

Allie Kelly, 245 Weston Road, said that she is the abutter to the rear of the property. She asked that the special permit be denied. She said that there is no compelling reason or need for overbuilding other than convenience of profit. She said that it would have a significant detrimental effect on the use and enjoyment of her property. She said that the proposed house would be located 7.6 feet from the property line. She said that there will be a massive impact on her privacy, light source, view and general openness. She said that she has two young children. She said that it will be an extensive building construction process with lots of dust and noise. She said that she faces existing challenges with runoff and drainage from the property onto hers. She said that she did not see anything in the proposal to address that situation. She said that she assumed that the proposed structure will exacerbate the problem. She said that she recognizes that this will replace a dilapidated home but the egregious overbuilding, and insensitive increase in mass, bulk and height erodes the aesthetics of the streetscape. She said that the nonconformity of the proposed structure is not a modest size, as the Petitioner states. She said that it will be substantially more detrimental to the neighborhood. She said that the Petitioner stated that the house will be located across from newer homes of larger proportions. She said that, while this is true, the houses on the same side of Weston Road are of modest size. She said that her house is approximately 1,600 square feet. She said that the abutting three properties are not significantly larger than that. She said that they are all within the 2,000 square foot range. She said that the proposed structure will be 21 percent above that, which is a massive increase. She said that it is a big house on a very small lot. She said that the Petitioner reminded the Board that a special permit was granted for a similar circumstance at 6 Fairbanks but that was a completely different situation. She said that there was not a fire hazard caused by such a massive construction in such close proximity to another home. She said that setback rules serve many purposes and each situation is unique. She said that the small size of a lot should never excuse overbuilding what the law would otherwise allow just so the owner can acquire as much living space as possible and certainly not for profit. She asked that the Board deny the special permit.

Martha Cunningham, 243 Weston Road, said that she has lived in her house since 1963. She said that the house has not been abandoned. She said that the man has been trying to sell it for a considerable amount of time. She said that his daughter was living off and on. She said that the Petitioner would like to change the footprint of the existing home. She said that the project is much too large for the parcel. She said that the size of the lot is very small. She said that there is an existing one floor ranch house with an unattached garage. She said that the plan is to demolish the existing house and garage and build a much larger house. She said that they could build within the existing footprint but that does not fit the size that they would like. She said that she is very much opposed to the Board granting a special permit for this type of a home on a very tiny lot.

Mr. Levy said that he agreed that it is too much house for the lot. Mr. Sheffield said that he had come to that conclusion as well.

Mr. Himmelberger asked if the Board would entertain allowing the matter to be continued to the next public hearing. He said that the Petitioner would submit revised drawings prior to the hearing to address some of the concern. Mr. Levy said that a completely different panel will be sitting at the April 6, 2017

public hearing. He said that the Board could hear the petition de novo. Victor Panak, Planning Department, said that the April 6th hearing agenda is already full.

The Board discussed allowing the petition to be withdrawn without prejudice. Mr. DeMayo said that he would look for some guidance, based on the dimensions of the lot. He said that he understands the height and the square footage and the setbacks. Mr. Sheffield said that it is not an easy problem to solve. Mr. Himmelberger said that the new structure would essentially sit on the existing footprint and adds the garage to the left. Mr. Sheffield said that it will be almost three times as high. Mr. DeMayo said that they are trying to get as much setback as they can for the size of the lot. He discussed moving the garage and gaining the proper setback on that side. Mr. Sheffield said that a concern of the Board was the bulk of the structure.

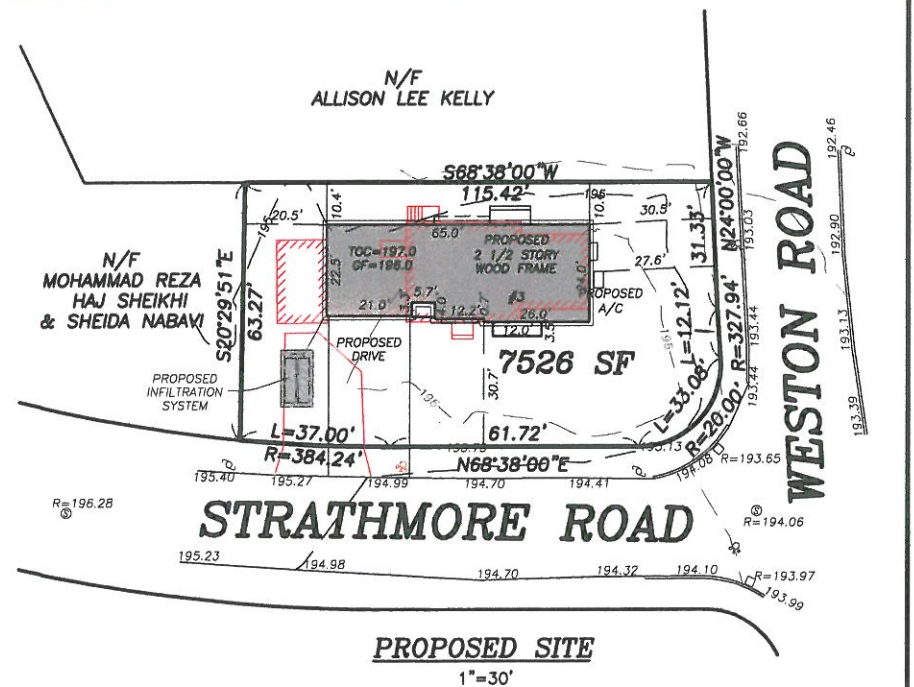
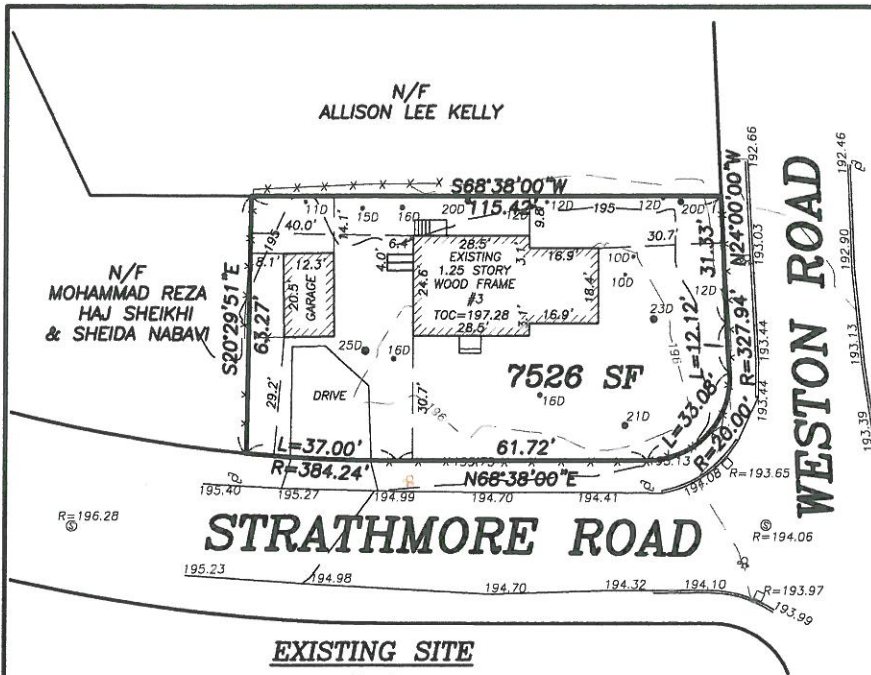
Mr. Levy asked about a renovation of the house. Mr. Redgate said that maintaining the rear makes sense because there is already a house there. He said that looking at the shape and geometry of the lot, it almost looks like the house wants to be forward and longer.

Allie Kelly said that moving the house toward Weston Road would have a direct impact. She said that there is a somewhat dangerous curve on Weston Road. She said that moving the house forward toward Weston Road would have a negative effect on that traffic area. She said that it would be a hazard. Mr. DeMayo said that he is fully in agreement with that.

Mr. Sheffield said that the Planning Board agrees with the Board's opinion and recommends that the special permit be denied, as requested.

Mr. Levy moved and Mr. Redgate seconded the motion to allow the petition to be withdrawn without prejudice. The Board voted unanimously to allow the petition to be withdrawn without prejudice.

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WELLESLEY MA 02482
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ZONING INFORMATION: SINGLE RESIDENCE 10 (SR10)

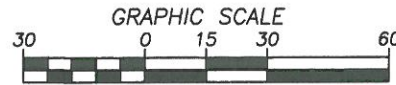
	REQUIRED	ACTUAL	PROPOSED
MINIMUM LOT AREA	10,000 SF	7,526 SF	7,526 SF
MINIMUM LOT FRONTAGE	60 FEET	131.8 FEET	131.8 FEET
MINIMUM FRONT SETBACK	30.4 FEET*	30.7 FEET	30.7 FEET
	30.0 FEET**	30.5 FEET	30.5 FEET
MINIMUM SIDE YARD	20 FEET	9.8 FEET	10.4 FEET
		8.1(40.0) FEET	20.5 FEET***
MINIMUM REAR YARD	N/A	N/A	N/A
MAXIMUM BUILDING COVERAGE	25%	17.8%/1339SF	22.5%/1693 SF
MAXIMUM BUILDING HEIGHT	36 FEET****	34.75 FEET (33'-7" + 1'-2")	
MAXIMUM BUILDING HEIGHT	2 1/2 STY.	1 1/4 STY.	2 1/2 STY

*FRONT SETBACK DETERMINED BY 500 FOOT RULE

**FRONT SETBACK ON NON FRONTING STREET SET TO 30.0

***PER SECTION XX OF THE WELLESLEY ZONING BYLAW, ALL BUILDING HEIGHTS ARE MEASURED TO AVERAGE FINISHED OR ORIGINAL GRADE WHICHEVER IS LOWER.

****SIDE SETBACK ON LEFT CURRENTLY TO DETACHED GARAGE, SETBACK TO HOUSE IN PARENTHESIS



TOWN OF WELLESLEY
MAP 159 PARCEL 117

NORFOLK COUNTY
REGISTRY OF DEEDS
BOOK 4715 PAGE 478

OWNER/APPLICANT:
3 STRATHMORE ROAD LLC

ZONING BOARD OF APPEALS
PLAN OF LAND
3 STRATHMORE ROAD
WELLESLEY, MASS.

Field Resources, Inc.
LAND SURVEYORS

JANUARY 17, 2017 SCALE 1"=30'
P.O. BOX 324 281 CHESTNUT ST.
AUBURN, MA NEEDHAM, MA.
508 832 4332 781 444 5936
fieldresources@hotmail.com