

TOWN OF WELLESLEY



MASSACHUSETTS

## ZONING BOARD OF APPEALS

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ZBA 2016-63

Petition of Lynne Hewett, PR for Bryant Stott Estate  
6 Fairbanks Avenue

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, August 11, 2016 at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Lynne Hewett, PR for Bryant Stott Estate 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 an existing nonconforming structure with less than required front yard, left side yard and right side yard setbacks, demolition of an existing garage and shed with less than required right side yard setbacks, and construction of a two-story structure with walk out basement with less than required front yard, left side yard and right side yard setbacks, on a 6,005 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, with 50 feet of frontage, at 6 Fairbanks Avenue, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On July 26, 2016, 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 David Himmelberger, Esq., who said that he was representing the now record homeowners, Aaron and Lee Thomas. He said that the Thomas's currently live at 84 Prospect Street, which is five houses up the road. He said that they like the neighborhood and would like to remain there.

Mr. Himmelberger said that the request is for zoning relief to raze and rebuild a single family structure on a nonconforming lot with nonconforming setbacks. He said that, with respect to the issue of special permits versus variances to raze and rebuild nonconforming structures, abandonment is the theory that is sometimes used to say that you cannot have a special permit if you are going to raze the structure because you are abandoning the nonconforming status. He said that does not apply. He said that abandonment is a concept that applies to homes where no one has lived there for 20 years. He said that the Bjorklund Case, which is one of the seminal cases for special permits involved the razing and rebuilding of a house on a nonconforming lot. He said that there was no issue there about losing the nonconforming status. He said that they believe that a special permit is appropriate but have applied for a variance as well, in case the Board does not agree that a special permit is appropriate.

Mr. Himmelberger said that this is a 6,005 square foot lot. He said that the proposed house will be of modest size. He said that all of the neighbors on all sides and across the street are in support of the project. He said that many are present at the public hearing.

Mr. Himmelberger said that the setbacks that are currently in existence will be improved by an inch or two. He said that the proposed house will extend beyond the existing house to the rear and will deepen in length. He said that the house is tastefully designed. He said that all of its elevations have great detail and are quite interesting. He said that the nonconforming garage at the rear will be removed. He said that the proposed house is well scaled, has great visual appeal and has a TLAG just over 2,700 square feet that includes 400 square feet in the basement. He said that they believe that a special permit is appropriate. He said that, in the event that the Board disagrees and feels that a variance is the way to go, the lot shape at 50 feet wide supports the granting of a variance, as does the eight foot drop in topography from the front to the rear.

Mr. Himmelberger said that Dustin Nolan, Architect, David Silverstein, Builder and Paul Beaulieu, Field Resources, Inc. were also present to answer questions.

A Board member confirmed that there will be no new nonconformities. He discussed treating this as a special permit. He said that typically a tear down is replaced with a conforming structure. He said that this will still be nonconforming. The Board said that it will be a little less nonconforming but will be a taller building.

Mr. Beaulieu said that when they started to look at the site to try to make it work best, they were trying to sit on the same footprint and make the walk out work so that they would not harm the grade at the rear of the lot. He said that they were trying to keep the driveway more level and functional. He said that the existing driveway drops down to the existing garage such that it is quite cumbersome to back out where it is narrow and treacherous. He said that in the process of keeping the front and rear of the lot more level to make passage across it more steady and to minimize future runoff, instead of a sloped site, they would have two fairly level planes, which was the impetus for most of the grading so that rainwater on the site will stay there. The Chairman said that the results seem counter intuitive. He said that they were going to the back of the lot, so he expected the grade plane to go down and it actually went up. Mr. Beaulieu said that as they went back, that ended up being their walk out condition and foundation. He said that they went up from there. He said that it did not create a grade change. He said that they set the walk out to a comfortable natural grade. He said that it only raised the top of concrete about one foot and they were able to match the natural grade pretty easily.

Mr. Himmelberger said that the existing structure is 20.6 feet high and the new structure will be 29.7 feet. He said that there will be no attic but the second floor will be dormered. He said that existing lot coverage is 1,142 square feet or 19 percent, will increase to 1,374 square feet or 22.9 percent.

Mr. Himmelberger said that existing and proposed impervious surface is not shown on the site plan. He said that the existing impervious surface includes an extensive driveway area going to the back that flairs out. He said that the driveway will terminate at the middle of the proposed house. He said that the garage and shed will be removed. He said that there will be a slight decrease in total imperious surface.

The Chairman confirmed that flattening out the lot will slow down the runoff as it runs toward the back of the property. He said that it will start off slowly until almost the end of the house and then run off fairly

quickly. Mr. Himmelberger said that they showed two drywells for roof runoff at each corner at the rear of the house.

Mr. Himmelberger said that the proposed TLAG is 2,700 square feet, including 434 square feet in the basement. He said that TLAG will be 1,198 square feet on the first floor, 1,060 square feet on the second floor, and 446 square feet in the basement. Mr. Nolan said that they do not have the total square footage for the existing house. Mr. Himmelberger said that TLA is 1,014 square feet, according to the Assessor's records. Mr. Beaulieu said that figure does not take the basement in the existing house into account. The Chairman said that the comparison of 2,700 to 1,014 square feet is in the range of the average TLAG of a tear down and rebuild. He said that it is generally between two and a half and three times.

Thomas Atkinson, 14 Crescent Street, said that he has lived there for 28 years. He said that he has seen the plan and fully supports it, as does his wife. The Board confirmed that Mr. Atkinson is the abutter on the left.

Nathan Jones, 5 Fairbanks Avenue, said that he lives directly across the street. He said that he supports the project. He said that it will be a big improvement to the neighborhood. He said that the current structure is falling apart and is in disrepair. He said that it is becoming a safety hazard because the fence is starting to collapse and the roof is caving in.

Mr. Himmelberger said that he believes that the Board has jurisdiction to approve this as a special permit. A Board member said that the Petitioner is not seeking to abandon the nonconformity. Mr. Himmelberger said that razing would only be done commensurate with a special permit having previously issued. A Board member said that they could tear it down and wait two years to rebuild the structure. Mr. Himmelberger said that two years is the Abandonment Statute as well. A Board member said that it will be a vast improvement to the current site and would be a project that he could support. The Chairman said that it would be difficult as a variance. He said that the lot shape does not seem to be too far out of the box, and the topography slopes toward the rear but the real issue is the narrowness of the lot. Mr. Himmelberger said that if the Board was going to conclude that a special permit would not be appropriate, the most compelling reason for a variance would be the shape of the lot because with 20 foot side yard setbacks there would have to be a 10 foot wide house. He said that if one took 6,005 square feet and made it a square lot, by taking the square root you get 77. He said that if you subtract 20, 20, 30 and 10 feet for setbacks, you would have a 37 by 37 house, which has a larger footprint than what is proposed here. He said that shape of lot does offer a very compelling reason to grant a variance. He said that he still thinks that a special permit is appropriate. The Chairman said that the Board typically looks at lots that are near the requirements for the district. He said that this lot is significantly less than the district requirements. He said that the Board looks at the facts on table and decides what needs to be done. Mr. Himmelberger said that in the past the Board has decided both ways, both special permit and variance. A Board member said that he thinks that the Board can treat this as a special permit and find that it is not substantially more detrimental to the neighborhood than the existing nonconforming structure.

#### Statement of Facts

The subject property is located at 6 Fairbanks Avenue, on a 6,005 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, with 50 feet of frontage, with a minimum

front yard setback of 18.8 feet, a minimum left side yard setback of 9.8 feet and a minimum right side yard setback of 12.2 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 an existing nonconforming structure with less than required front yard, left side yard and right side yard setbacks, demolition of an existing garage and shed with less than required right side yard setbacks, and construction of a two-story structure with walk out basement with less than required front yard, left side yard and right side yard setbacks, on a 6,005 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, with 50 feet of frontage, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan, an Allowable Height Plan, a TLAG Calculation Plan, and a Tree Bylaw Mitigation Plan, dated 6/13/16, stamped by Bradley J. Simonelli, Professional Land Surveyor, Proposed Floor Plans and Elevation Drawings, dated 6/16/16, prepared by DNA Architecture, and photographs were submitted.

On July 27, 2016, the Planning Board reviewed the petition and recommended that the special permit be approved.

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 an existing nonconforming structure with less than required front yard, left side yard and right side yard setbacks, demolition of an existing garage and shed with less than required right side yard setbacks, and construction of a two-story structure with walk out basement with less than required front yard, left side yard and right side yard setbacks, on a 6,005 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, with 50 feet of frontage 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 an existing nonconforming structure with less than required front yard, left side yard and right side yard setbacks, demolition of an existing garage and shed with less than required right side yard setbacks, and construction of a two-story structure with walk out basement with less than required front yard, left side yard and right side yard setbacks, on a 6,005 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, with 50 feet of frontage, 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.

ZBA 2016-63

Petition of Lynne Hewett, PR for Bryant Stott Estate  
6 Fairbanks Avenue

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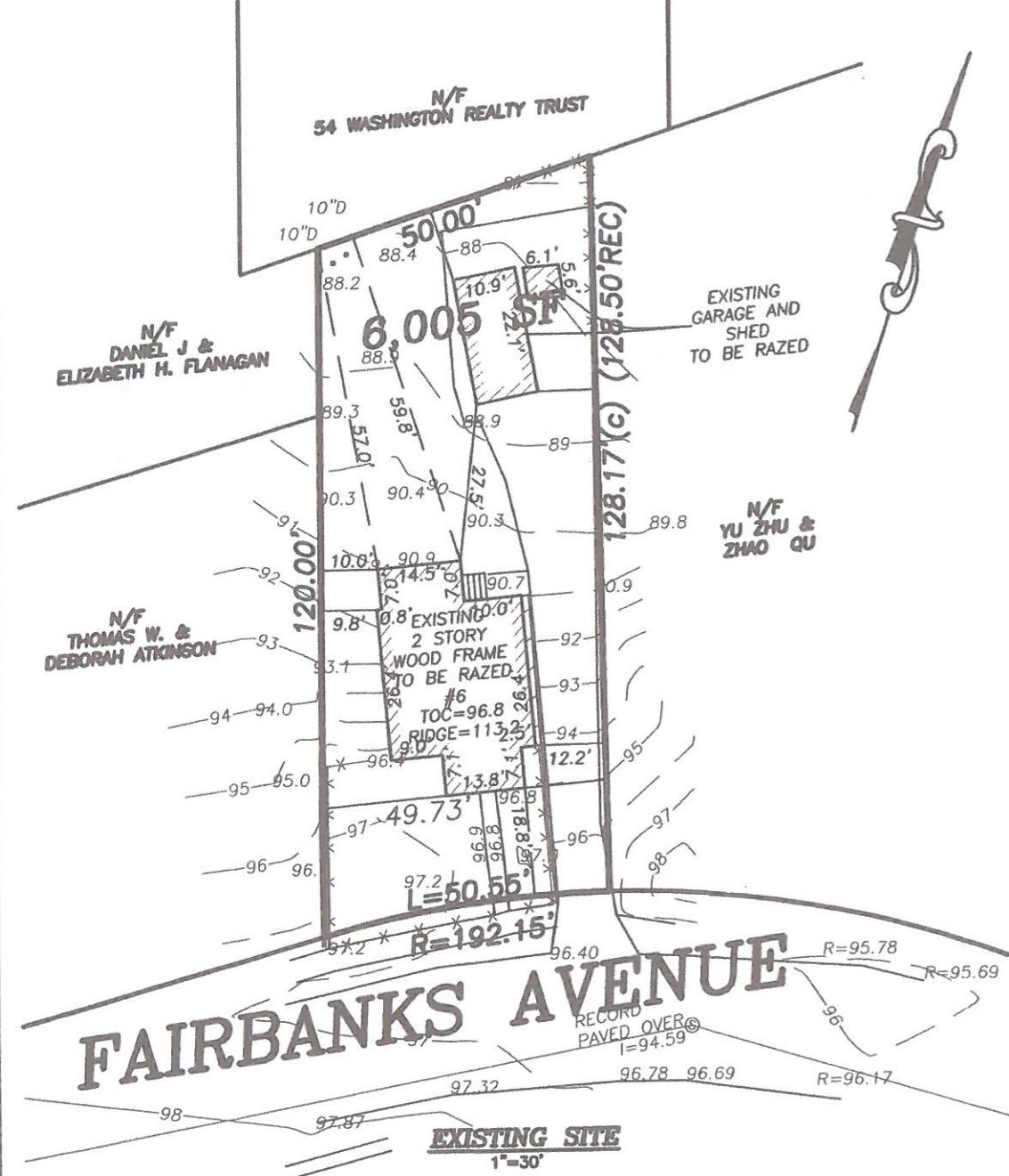
APPEALS FROM THIS DECISION,  
IF ANY, SHALL BE MADE PURSUANT  
TO GENERAL LAWS, CHAPTER 40A,  
SECTION 17, AND SHALL BE FILED  
WITHIN 20 DAYS AFTER THE DATE  
OF FILING OF THIS DECISION IN THE  
OFFICE OF THE TOWN CLERK.

  
J. Randolph Becker, Acting Chairman

  
Robert W. Levy

  
Derek B. Redgate

cc: Planning Board  
Inspector of Buildings  
lrm



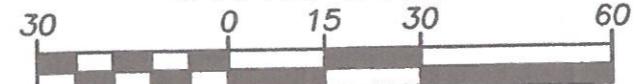
ZONING INFORMATION: SINGLE RESIDENCE 10 (SR10)

	REQUIRED	EXISTING	PROPOSED
MINIMUM LOT AREA	10,000 SF	6,005 SF	6,005 SF
MINIMUM LOT FRONTAGE	60 FEET	50.55 FEET	50.55 FEET
MINIMUM FRONT SETBACK	30 FEET*	18.8 FEET	18.9 FEET
MINIMUM SIDE YARD	20 FEET	9.8 FEET	9.9 FEET
MINIMUM REAR YARD	10 FEET	57.0 FEET	40.4 FEET
MAXIMUM BUILDING COVERAGE	25% OR 2500 SF	1142 SF(19.0%)	1374 SF(22.9%)
MAXIMUM BUILDING HEIGHT	36 FEET	20.6 FEET	29.7 FEET
MAXIMUM BUILDING HEIGHT	2 1/2 STORIES	2 1/2 STORIES	2 1/2 STORIES

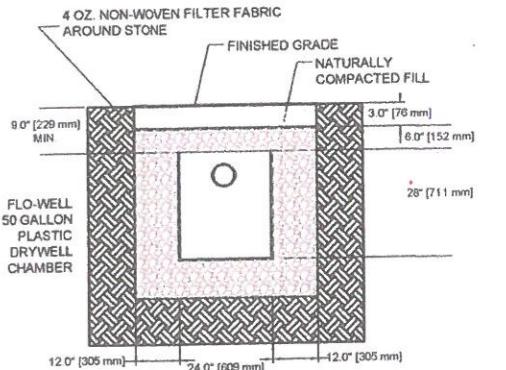
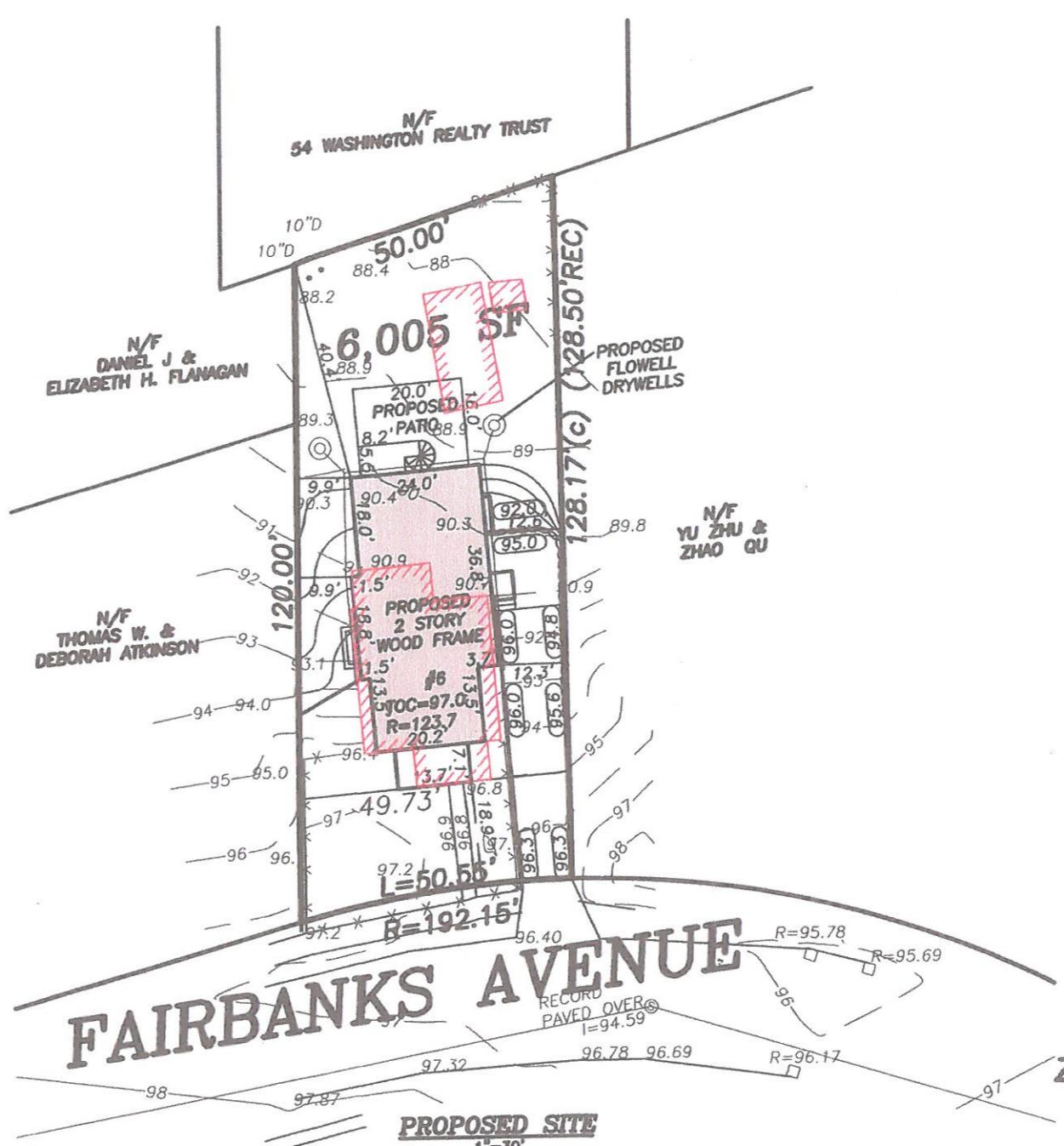
\*FRONT SETBACK DETERMINED BY 500 FOOT RULE



GRAPHIC SCALE



066-16



GENERAL NOTES  
FLO-WELL 50 GAL 24X 28.75 ROUND DRYWELL SYSTEM  
STORAGE PROVIDED = 6.68 CF/FT PER DESIGN UNIT.  
REFER TO NDS CURRENT RECOMMENDED INSTALLATION  
GUIDELINES.

ALL FLO-WELL DRYWELLS MUST BE INSTALLED IN ACCORDANCE  
WITH ALL APPLICABLE LOCAL, STATE AND FEDERAL  
REGULATIONS.

**DRYWELL DETAIL**  
NOT TO SCALE

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10/16 JUL 26 A 9: 111

**ZONING BOARD OF APPEALS  
PLAN OF LAND  
6 FAIRBANKS AVENUE  
WELLESLEY, MASS.**

**Field Resources, Inc.**  
LAND SURVEYORS

JUNE 13, 2016

SCALE 1"=30'

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