

TOWN OF WELLESLEY



MASSACHUSETTS

## ZONING BOARD OF APPEALS

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

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ZBA 2019-71  
Petition of Edward Hussey  
25 Atwood Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, August 8, 2019 at 7:30 pm in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Edward Hussey requesting Modification of a Variance pursuant to the provisions of Section XIX and Section XXIV of the Zoning Bylaw and/or a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw, that demolition of an existing nonconforming detached garage with less than required left side yard setbacks, and construction of a new, one-story, two-car garage with less than required left side yard setbacks, at 25 Atwood Street, in a 10,000 square foot Single Residence District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. A Variance was granted in 1992 to add a nonconforming deck with less than required right side yard setbacks to the pre-existing nonconforming home with less than required right side yard setbacks.

On July 9, 2019, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Present at the public hearing were David Himmelberger, Esq. and Edward Hussey, the Petitioner. Mr. Himmelberger said that the request is to raze and rebuild a pre-existing nonconforming two-car garage with a left side yard setback of 10.92 feet. He said that the existing 18 foot wide by 20 foot deep garage will be replaced with a 26 foot wide by 24 foot deep garage with an improved side yard setback of 11.5 feet and a conforming 10 foot rear yard setback. He said that the existing garage is narrow for two cars and its close proximity to the house makes access to the right bay difficult. He said that a far more functional garage will be achieved by widening it and pushing it back on the lot. He said that the proposed height of the new garage is 18 feet 9 1/2 inches with no upper level space. A Board member confirmed that there will be no stairs in the garage.

Mr. Himmelberger said that the property is pre-existing nonconforming relative to the house and the garage. He said that a deck was constructed within the right side yard setback of the house, pursuant to a variance in 1992. He questioned whether the petition should be considered as a modification of an existing variance or as a special permit/finding. The Chairman said that the Board's analysis of this petition should be consideration of a special permit, identifying the nonconformity and making a determination regarding detriment to the neighborhood.

A Board member said that the plans show a pre-designed garage that does not take the slope of the site into account. He asked if the garage doors will be at the grade of the existing driveway or if there will be grading changes. Mr. Hussey said that there may be a slight grade change because the existing grade is

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such that when it rains, water goes into the garage. He said that they may raise the grade up a bit to push the water out to the sides or back down the driveway.

A Board member said that the proposed garage will be significantly higher in the back on the side closest to the neighbor at the rear. He questioned whether moving it back will have more impact on that neighbor. Mr. Hussey said that there is a short chain link fence at the rear of the property and the plan is to put privacy bushes and plantings across the back of the lot. A Board member said that the property behind is at a lower elevation.

A Board member said that the new garage will be approximately twice the size of the existing garage. He said that there will be some improvement to the setback on the left. Mr. Himmelberger said that it is possible under case law to leave the existing side yard setback but it is generally the practice to try to improve it. He said that the plan is to push the garage over about a foot and push it back so that it is more accessible. He said that there is substantial screening between the properties.

Mr. Hussey said that moving the garage over would significantly change the lot. He said that the existing garage is decaying and they are looking to improve it. He said that the existing driveway is single lane and they cannot fit two cars side by side. He said that they tried to match the house and the garage as close as possible and kept the same look of the garage so as to not affect the appearance from the street. He said that the proposed design is a thoughtful approach that will allow them to keep the yard.

Mr. Hussey said that they discussed the plans with most of the contiguous abutters. He said that the house behind was just sold and they have not met the current owners yet.

The Board discussed moving the garage away from the side property line or making it smaller. Mr. Himmelberger asked that the petition be continued to allow the Petitioner time to review options for revisions to the design.

September 10, 2019

Mr. Himmelberger said that revised plans were submitted that show the garage moved in another foot to a setback of 12.5 feet. He said that a question was raised at the previous hearing about moving the garage to a compliant location. He said that the revised plot plan shows a curved line that marks the approach to the right side bay. He said that one can see that the further the garage is moved over, the more difficult it is to get into the bay. He said that, according the Town's GIS map, all of the garages on Atwood Street and the abutting side on Aberdeen Road have side yard setbacks that range from 2 feet to 11.5 feet. He said that activities at Whole Foods and St. Paul's will further impact Atwood Street, which is heavily trafficked and is used as a cut through, making it extremely difficult to back out of the driveway. He said that the Applicant submitted a landscape plan detailing the extensive arbor vitae screening to be planted at the rear of the garage, as well as letters from the abutting neighbors, all of whom are supportive of the project, including the immediate abutter to the left of the garage at 27 Atwood Street. He said that the height was reduced by a foot and the garage was moved further inward to a setback that is consistent or better than garages in the immediate vicinity. He said that it will be a net wash of additional area within the setback space. He said that, based on that and the support of the neighbors, the Applicant believes that a compelling case exists for a determination that this will not be substantially more detrimental to the neighborhood than the pre-existing nonconforming structure.

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A Board member discussed concerns with smaller garages being replaced by larger garages and the bulk on the property. He said that the Applicant is asking to put the garage in a place where they will be able to make better use of the rear yard.

A Board member discussed concerns about the height of the garage affecting the neighbor to the rear. He confirmed that the Applicant has not spoken with the neighbors who live behind 25 Atwood Street. He said that the Planting Plan should be a condition of the decision. Mr. Himmelberger signed and dated the Planting Plan and submitted it to the Board to enter into the record.

A Board member discussed Mr. Himmelberger's informal inventory of detached garages on Atwood Street. He said that there are very few small single car garages.

A Board member asked if the garage will be a factory constructed design. Mr. Hussey said that portions of it will be. He said that they tried to plan construction in a way that will minimize disruption to the neighborhood over a long period of time. A Board member confirmed that the garage will not be hauled in on a large flatbed truck.

A Board member confirmed that the height of the garage was measured from the top of the foundation.

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

#### Statement of Facts

The subject property is located at 25 Atwood Street, in a 10,000 square foot Single Residence District. The subject garage has a minimum left side yard setback of 10.92 feet where 20 feet is required.

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 nonconforming detached garage with less than required left side yard setbacks, and construction of a new, one-story, two-car garage with less than required left side yard setbacks, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Letter to Zoning Board of Appeals, dated 9/4/19, from David J. Himmelberger, Esq., a Plot Plan, dated 5/7/19, revised 9/10/19, stamped by Paul J. DeSimone, Professional Land Surveyor, Proposed Floor Plans and Elevation Drawings, dated 6/25/19, revised 8/16/19, prepared by Everett W. Skinner IV, Professional Engineer, Planting Plan, dated 9/10/19, signed by David J. Himmelberger and Edward M. Hussey, and photographs were submitted.

On August 7, 2019, the Planning Board reviewed the petition and recommended that a 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 demolition of an existing nonconforming detached garage with less than required left side yard setbacks, and construction of a new, one-story, two-car garage with less than required left side yard setbacks will not result in the intensification of existing nonconformities, will not result in additional nonconformities, and will 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 detached garage with less than required left side yard setbacks, and construction of a new, one-story, two-car garage with less than required left side yard setbacks, subject to the following condition:

- The Garage and Landscaping Plan, dated September 10, 2019, signed by David J. Himmelberger and Edward M. Hussey shall be incorporated into the decision.

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, the Special Permit shall expire two years after the date time stamped on this decision.

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25 Atwood Street

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

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Applicant Edward Hussey  
Address 25 Atwood Street

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**NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK**

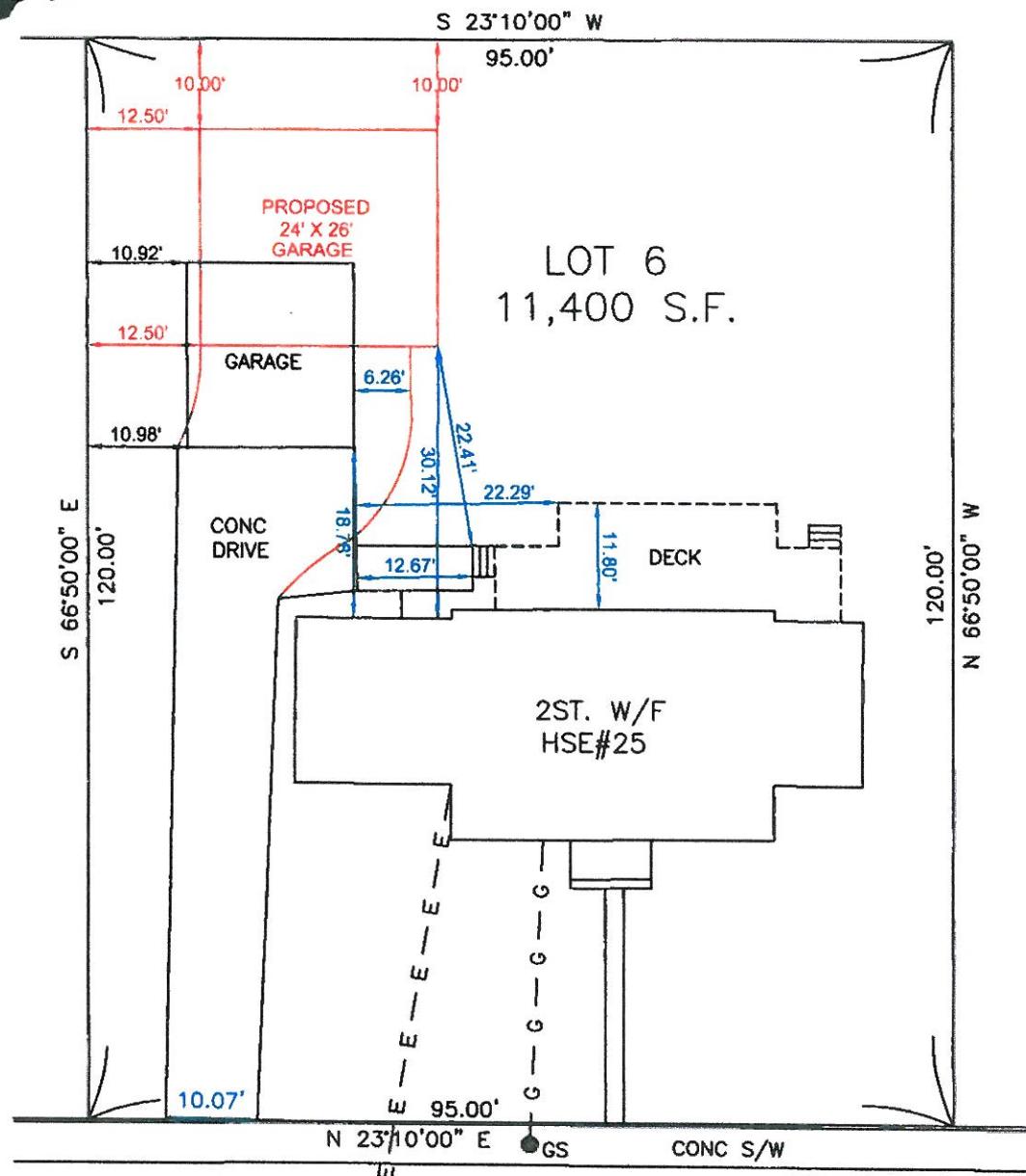
In accordance with Section 11 of Chapter 40A of the Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Wellesley, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Date:

Attest:

  
Cathryn Jane Kato  
Town Clerk

cc: Planning Board  
Inspector of Buildings  
lrm



PROPOSED ADDITION  
PLAN OF LAND

IN

WELLESLEY, MA.

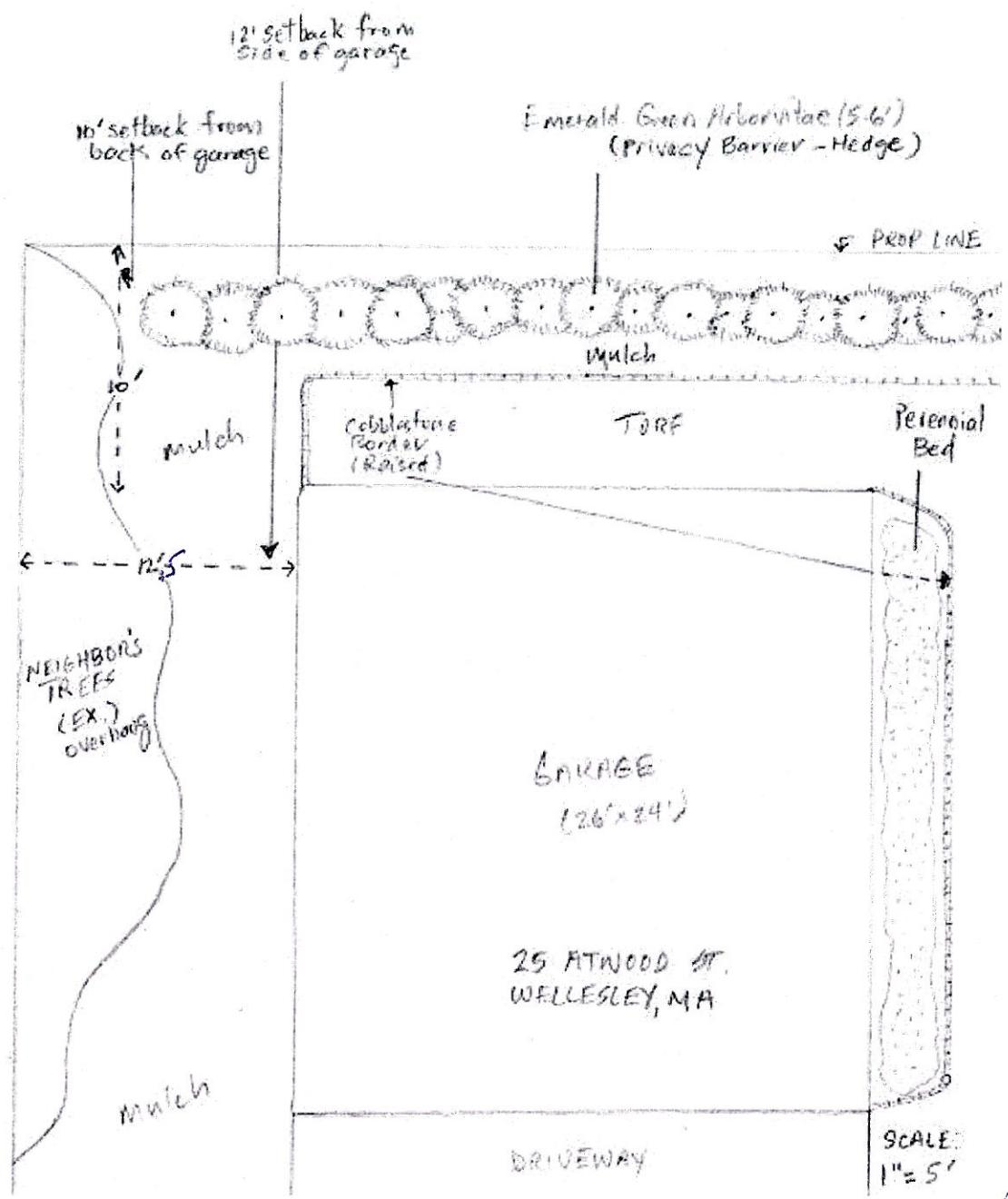
I CERTIFY THAT THE PROPOSED  
GARAGE SHOWN ON THIS PLAN  
DOES NOT LIE WITHIN THE FLOOD  
PLAIN.



SCALE: 1"=20' MAY 7, 2019  
REVISED: SEPTEMBER 10, 2019

OWNER: Nicole Goodnow-Hussey  
and Edward Hussey  
25 Atwood Street  
Wellesley, Ma.

COLONIAL ENGINEERING INC.  
11 AWL STREET MEDWAY, MA.  
508-533-1644



ZBA 9/10/19  
David J. Hanrahan  
Evelyn M. Flory