

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

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2017 JUL 25 P 3:40

ZBA 2017-63
Petition of Peter Katsikaris
15 Manor Avenue

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, July 13, 2017, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Peter Katsikaris requesting modification of a Variance and/or a Special Permit/Finding pursuant to the provisions of Section XIVE, Section XVII, Section XIX, Section XXIV-D and Section XXV of the Zoning Bylaw that demolition of an existing deck and construction of a one-car garage at the basement level with a one-story addition above and a deck, raising the roof over existing attic space and construction of a two dormers with less than required front yard setbacks to Rose Street, and construction of a portico over the front stoop, on an existing nonconforming structure with less than required front yard setbacks to Rose Street, on a corner lot in a 10,000 square foot Single Residence District, in a Water Supply Protection District, at 15 Manor Avenue, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The existing nonconforming air conditioning condenser has less than required side yard setbacks.

On June 7, 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.

Presenting the case at the hearing were David Himmelberger, Esq. and Peter Katsikaris, the Petitioner.

Mr. Himmelberger said that the request is for modification of an existing variance and for a special permit to construct a one story addition, deck and reconfigured roof to a pre-existing nonconforming home, due to insufficient side yard setback. He said that a variance was granted in 1972 for the house with a paper street on its left side known as Rose Street that constituted frontage from which a 30 foot front yard setback needed to be maintained. He said that the variance allowed a 26.6 foot setback.

Mr. Himmelberger said that the determination of paper streets as frontage evolved over time. He said that it is the determination of the current Building Inspector that unless a paper street may be driven over, it does not qualify as frontage for the purpose of front yard setbacks. He said that it would be a side yard setback under today's standards. He said that as a side yard setback, the Petitioner would be seeking a special permit for a pre-existing nonconforming structure, namely the side facing garage. The Board said that the proposal is to add a garage extension.

Mr. Himmelberger said that the home is sited within the wetlands buffer. He said that the project has been approved by the Wetlands Protection Committee (WPC) and the Order of Conditions has been recorded at the Registry of Deeds. He said that the addition is otherwise compliant with zoning and the

neighbor to the left is in full support of the project. He said that the paper street is actually a wooded and landscaped buffer. He said that the additional footprint will increase lot coverage from 10.3 percent to 13.7 percent, which is an additional 544 square feet. He said that the existing Total Living Area Plus Garage (TLAG) of 2,846 square feet will increase to 4,081 square feet. He said that the current peak height is 32.7 feet and will remain unchanged. He said that the height of the slightly raised roof will be 28.7 feet. He said that, based on the foregoing, the Petitioner is proposing that the proposed structure shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, or alternatively, that modification of an existing variance is appropriate.

Mr. Himmelberger said that the air conditioning condenser is located 19 feet from the property line and is a pre-existing nonconforming element. He said that it has been there since 1992. The Board said that other than the air conditioning condenser, the nonconformity is the setback on the west side of the house at 26.6 feet. The Board said that a side facing garage requires 30 feet.

Mr. Himmelberger said that he believes that Rose Street is a Derelict Fee Statute and the property owners have rights to the center of it. He said that it leads to someone's backyard. The Board said that some of the other streets that go to Weston from Manor Avenue do have residences on them but Rose Street will not have any residences on it because the land cannot be further subdivided into two buildable lots.

The Board discussed the requests for a modification of a variance and a special permit for an addition to a nonconforming structure. The Board said that the special permit would tie back into Large House Review (LHR). The Board said that a TLAG that exceeds the threshold for a 10,000 square foot Single Residence District would normally be of concern but this lot is significantly larger than 10,000 square feet.

Mr. Himmelberger said that the garage at 21 Manor Avenue, which is on the other side of Rose Street, is the closest element. The Board said that there is heavy screening in between. The Board said that the house at 11 Manor Avenue is only impacted by the existing nonconforming air conditioning condenser on the east side of the property.

The Board said that the property is located in a Water Supply Protection District (WSPD). The Board asked if there will be any mitigation for runoff. Mr. Himmelberger said that there will be two catch basins. The Board said that the decision will be subject to the Order of Conditions.

Mr. Himmelberger said that the variance was granted for the left side yard setback. He said that there is also a pre-existing nonconforming air conditioning condenser to consider for a special permit. He said that the variance for setback of the structure needs to be modified because they are expanding the structure at the same setback. He said that the side facing garage is a new nonconformity. He said that it was made nonconforming when the Town adopted 30 foot setbacks for side facing garages. He said that is the interpretation that the Building Inspector currently adheres to. He said that the later developed nonconformity should be reviewed through today's lens. He said that they will intensify the nonconformity. He said that the question is whether they will be making it substantially more detrimental. He said that they are arguing that they will not. The Chairman asked Mr. Himmelberger why the 26.6 foot setback would not be covered by the variance. Mr. Himmelberger said that the variance was not granted for a side facing garage. He said that it was granted for the structure.

The Chairman said that the variance is for the setback from Rose Street and that applies to today's Zoning Bylaw as well. Mr. Himmelberger said that they are seeking to extend the garage, not make it worse but maintain the setback. He said that causes special permit analysis to be brought forth, as does the air conditioning condenser. A Board member said that if they got a variance on the property and want to do anything in the area related to the variance, it is a modification of the variance. He said that this Board is considering whether the previous Board would have granted the variance, even with the current design.

The Board said that when the air conditioning condenser was put in in 1992, it was conforming. Mr. Himmelberger said that it is pre-existing nonconforming. The Board said that it is the tail wagging the dog. Mr. Himmelberger said that nonconformities are not categorized by magnitude.

The Board said that Mr. Himmelberger's argument is that by extending the structure, they need a finding. The Board said that modification to the variance will cover that. The Board said that it was not convinced about the argument that due to the existing nonconforming air conditioning condenser, this will require a special permit. The Board said that a variance is a higher relief than a special permit. Mr. Himmelberger said that they would be seeking a special permit for the extension of the pre-existing nonconforming side facing garage. He said that the Building Inspector's rationale for determining frontage is that there has to be a way in existence when subdivision control was enacted and it cannot be just a paper street, and that it has to be laid out and usable. He said that the Building Inspector's interpretation of this as a side yard follows the bylaws for frontage. He said that this is a pre-existing nonconforming structure by virtue of the side facing garage with less than 30 feet of setback. He said that the entire project will be encompassed in the special permit, not just the part that is in the offending nonconformity. The Board said that if it is to consider this as a special permit, it will have to look at moving the addition four feet to make it conforming. Mr. Himmelberger said that it lines up with the existing structure. He said that the floor plan is designed to flow from the existing structure. A Board member said that the argument that the side plane needs to be maintained is not a strong argument. The Board said that the intent of the bylaw is to make things conforming, if possible. The Board expressed concerns that granting a special permit would be a way to avoid LHR.

The Chairman said that the arguments that the Board that granted the variance put together did relate to hardship but did not relate to topography, shape of the lot or any of the usual things that the Board considers. A Board member said that the Board at the time granted a variance to what was otherwise an ordinary lot. He said that the uniqueness was the paper street there. Mr. Himmelberger said that the reason that the Board granted the variance was to overrule the Building Inspector who said that it was a street. He said that the current Building Inspector has a contrary view. He said that he would argue that the Board should respect the current Building Inspector's view and deem it a special permit situation. The Chairman said that the paper street has not been built on in the past 45 years.

The Board said that granting modification of the variance would render consideration of the request for a special permit moot because it would allow the construction as requested. The Chairman said that if the Building Inspector tells the Applicant that they have to go for LHR, the Applicant can appeal the decision of the Building Inspector.

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 15 Manor Avenue, on a corner lot in a 10,000 square foot Single Residence District, in a Water Supply Protection District, with a minimum front yard setback to Rose Street of 26.6 feet, and a minimum side yard setback of 19 feet to an existing air conditioning condenser.

The Petitioner is requesting modification of a Variance and/or a Special Permit/Finding pursuant to the provisions of Section XIVE, Section XVII, Section XIX, Section XXIV-D and Section XXV of the Zoning Bylaw that demolition of an existing deck and construction of a one-car garage at the basement level with a one-story addition above and a deck, raising the roof over existing attic space and construction of a two dormers with less than required front yard setbacks to Rose Street, and construction of a portico over the front stoop, on an existing nonconforming structure with less than required front yard setbacks to Rose Street, on a corner lot in a 10,000 square foot Single Residence District, in a Water Supply Protection District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Letter to Zoning Board of Appeals, dated 6/5/17, from David J. Himmelberger, Esq., a Plot Plan, dated 6/6/17, stamped by John R. Hamel, Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 5/16/17, prepared by Homefolks Design, and photographs were submitted.

On February 20, 2017, the Wetlands Protection Committee issued Order of Conditions, Mass DEP: File #324-0839.

On July 5, 2017, the Planning Board reviewed the petition and recommended that approval of a Special Permit and/or modification of a Variance 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.

The Board is of the opinion that in granting modification of previously granted Variance, ZBA 72-27, it was determined by a previous Board in 1972 that a hardship existed.

Therefore, in reliance on the prior findings of that Board, this Board amends the Variance to permit demolition of an existing deck and construction of a one-car garage at the basement level with a one-story addition above and a deck, raising the roof over existing attic space and construction of a two dormers with less than required front yard setbacks to Rose Street, and construction of a portico over the front stoop, on an existing nonconforming structure with less than required front yard setbacks to Rose Street, in accordance with the submitted plans and construction drawings and subject to:

- Order of Conditions, MassDEP File #:324-0839, issued on February 20, 2017

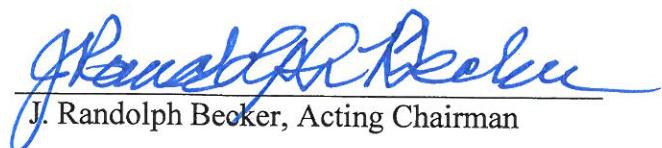
The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed construction plans.

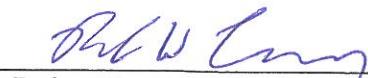
If construction has not commenced, except for good cause, this Variance shall expire one year after the date time stamped on this decision.

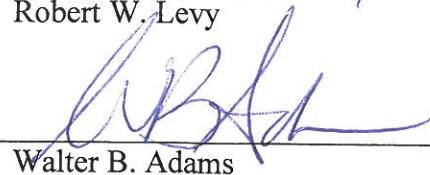
ZBA 2017-63
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15 Manor Avenue

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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


Walter B. Adams

cc: Planning Board
Inspector of Buildings
lrm

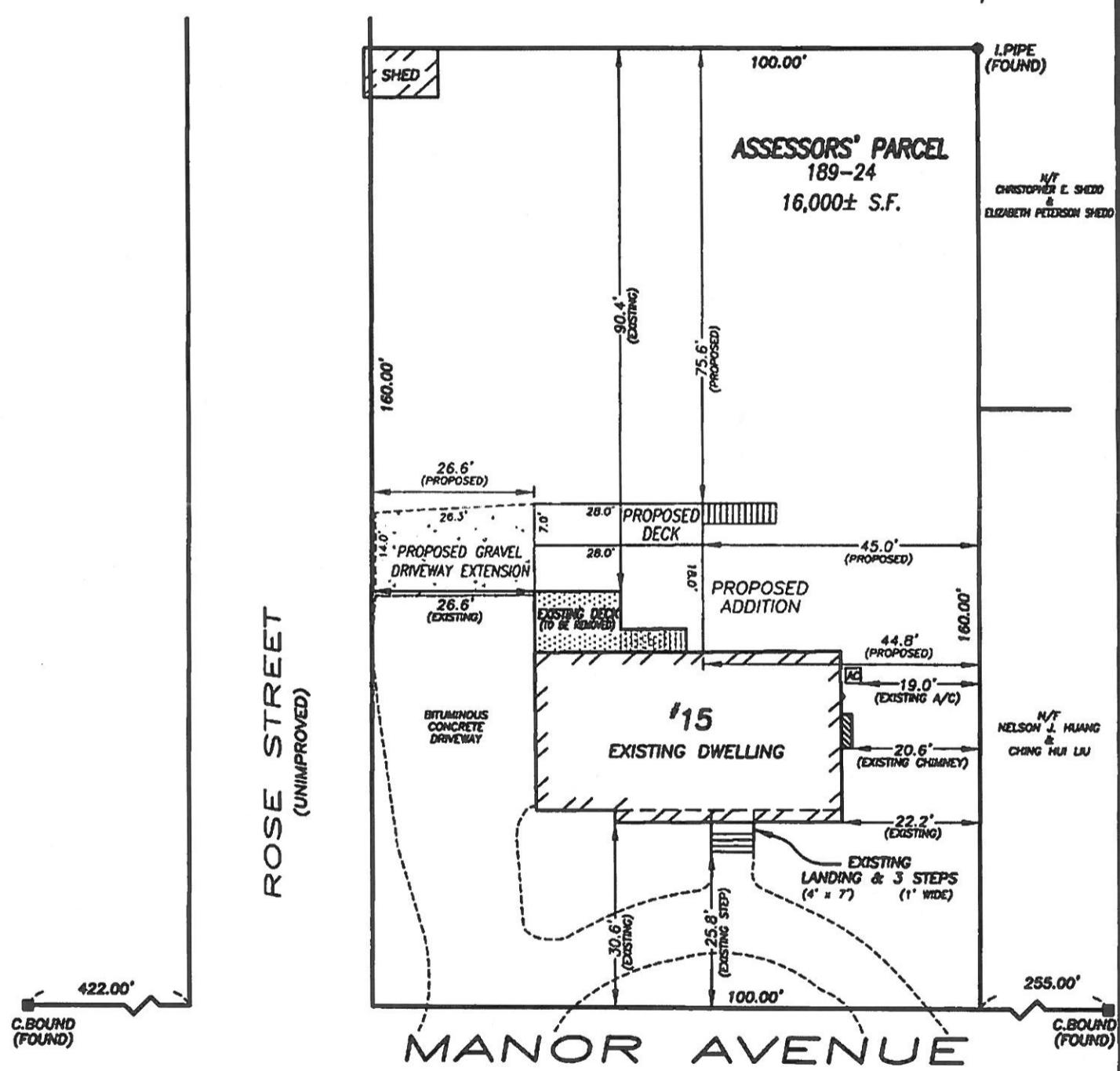
SITE PLAN
15 MANOR AVENUE
WELLESLEY, MASSACHUSETTS

1 INCH = 20 FEET JUNE 6, 2017
SNELLING & HAMEL ASSOCIATES, INC.
PROFESSIONAL LAND SURVEYORS & ENGINEERS
10 LEWIS STREET P.O. BOX 102
LINCOLN, MASSACHUSETTS 01773
(781) 259-0071

OWNERS OF RECORD:
PETER G. KATSIKARIS
&
MARIA MAVRO
BK. 12633 PG. 254

SCALE 1" = 20"

A horizontal number line with tick marks every 10 units, labeled 0, 20, 40, 60, and 80.



I HEREBY STATE THAT THE LOCATION OF THE FEATURES SHOWN HEREON IS THE RESULT OF A FIELD SURVEY PERFORMED AS OF SEPTEMBER 13, 2016, WITH THE USE OF A TOPCON TOTAL STATION.

PLAN REFERENCES:

- PLAN BOOK 69 PAGE 3324
- PLAN 594 OF 1982

NOTES:

- ZONING DISTRICT: SR10
- EXISTING LOT COVERAGE: 1,845± SF OR 10.3%
- PROPOSED LOT COVERAGE: 2,240± SF OR 14.0%

**JOHN R. HAMEL
PROFESSIONAL
LAND SURVEYOR**



JOHN R. HAMEL
PROFESSIONAL
LAND SURVEYOR

JUNE 6, 2017

DATE:

16058.DWG
JUNE 6, 2017