

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

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ZBA 2017-72

Petition of Brossi Brothers LTD Partnership
11 Pleasant Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, August 10, 2017, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Brossi Brothers Limited Partnership requesting a Variance and/or a Special Permit/Finding pursuant to the provisions of Section XVII, Section XVIII (C) (1), Section XXIV and Section XXV of the Zoning Bylaw that demolition of a pre-existing nonconforming single family structure and garage and construction of a two-family structure with less than required square footage to comply with the ratio of families to lot area requirement, on a 9,974 square foot lot in a General Residence District in which the minimum lot size is 10,000 square feet, at 11 Pleasant Street, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On July 6, 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WITHDRAWN WITHOUT PREJUDICE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 were Stanley Brooks, Esq., David A. Brossi, David W. Brossi and Michael Brossi, the Petitioner.

Mr. Brooks said that David Brossi, Senior was born on Pleasant Street 80 years ago and the family has owned this property in excess of 50 years.

Mr. Brooks said that there are two requests before the Board. He said that the first request is for a special permit because it is an undersized lot upon which it is proposed to be constructed a two family dwelling. He said that the property is located in a General Residence District where the minimum conforming lot size is 10,000 square feet. He said that this property is 9,974 square feet, which is short of the minimum by an area about the size of a piece of plywood.

Mr. Levy asked if the lot has always been that size or if it changed as a result of a taking over the years. Mr. Brooks said that the lot was laid out a long time ago. He said that the first two lots along Pleasant Street, southerly to northerly, are both exactly 8,000 square feet, or 80 by 100 feet. He said that this lot has a crooked line that rendered the lot to the south, number 7, exactly 8,000 square feet. He said that on the other side at 15 Pleasant Street, it is exactly 8,000 square feet. He said that the lots pre-exist zoning. He said that a two-family is an of right use on conforming lots in the district. He said that the existing house encroaches in the front yard and the existing garage encroaches in the side and rear yard. He said that there are four existing nonconformities.

Mr. Brooks said that the proposed project will eliminate the front, side and rear encroachments so that lot size will be the only nonconformity. He said that they will create a new nonconformity because they need 5,000 square feet of land per dwelling unit, in accordance with Section XVIII of the Zoning Bylaw. He said that the owner attempted to acquire additional property from the abutters to the rear on Oak Street, both of which have more than sufficient land to give but they both declined to sell, so the Petitioner is before the Board seeking relief.

Mr. Brooks said that the proposed dwelling will be 31 feet from the street, 21 feet on the left side, 21.5 feet on the right side, and 17.5 at the rear, well within the setbacks. He said that lot coverage is proposed to be 25 percent, which is allowable. He said that the proposal is for two four-bedroom, three and a half bath dwellings which will be consistent with what is in the neighborhood. He displayed an aerial photograph of the neighborhood that showed the multi-family dwellings in the district. He said that directly across the street is a rather large two unit condominium. He said that there are multi family dwellings a couple of lots down and behind the lot. He said that there will be approximately 60 feet of separation between the proposed structures and the abutting dwellings on either side and 120 feet from the houses that abut to the rear on Oak Street. He said that the request is that the Board grant a special permit to allow construction on a lot with nonconforming area and find that the proposed structure will not be substantially more detrimental to the neighborhood than the existing dwelling. He said that these plans were shown to all of the direct abutters and many others in the neighborhood and there were no objections by anyone to this project going forward.

Mr. Brooks said that the second request is for variance or a special permit for relief from Section 18C.1 that requires 5,000 square feet per dwelling unit. He said that they will be 13 square feet short for each unit, which is rather *di minimis*. He said that you can see on the Town Plan that there is an odd lot line that, if it were straight, would have created sufficient land area. He said that attempts were made to make the lot compliant but were not successful. He said that this project will not make the lot less nonconforming, as it will remain short by 26 square feet, regardless of what is constructed there. He said that it is their opinion that literal enforcement of the Zoning Bylaw would involve substantial hardship to the Petitioner because they would not have the ability to control the lot that they have owned for over 50 years. He said that the lot shape is an issue. He said that it is a sloping lot but they have dealt with the topography with a retaining wall. He said that the proposed house has a lot of nice architectural features that will reduce the mass and bulk. He said that the hardship is not self-created and would affect any owner of this property. He said that it is a *di minimis* shortage of square footage and it prevents the owner from using the property for which they would otherwise be entitled to under the Zoning Bylaw. He said that the owners cannot reasonably use the land in a manner that is consistent with the zoning district and the neighborhood. He said that the issuance of a variance would not create any injustice to the abutters or to the neighborhood and will allow for a reasonable use of the property. He said that the project would be consistent with the neighborhood and the bylaw, would be in harmony with the intent of the bylaw, would not be a detriment to the public good, and would not nullify or derogate from the intent or purpose of the bylaw.

Mr. Becker said that the Board does not have the option with respect to the units per square foot because of the change of use from single to two family. He said that a different set of rules apply. He said that it will be a new nonconformance and a special permit is not an option because it is not currently nonconforming. Mr. Brooks said that a two family is of right in a General Residence District.

Michael Grant, Inspector of Buildings, said that two approvals are needed. He said that a special permit is required to allow the Petitioner to take down the house because it is a nonconforming structure. He said that it would require a variance to put the two family house there.

Mr. Becker said that there was nothing in the submittal that talked about hardship as it related to topography, soil condition or lot shape. Mr. Brooks said that to the best of their knowledge there are no soil conditions. He said that they do not know if there is ledge. He said that topography and slope have been addressed with the design and the retaining wall. He said that the shape of the lot is due to some quirk with laying of the lot line. He said that the lot is irregular with one straight boundary and an irregular boundary that prevents the parcel from being fully compliant. He said that it is a situation where it is not self-created because the owners did not acquire the property knowing that it was noncompliant. He said that they have owned it since it pre-dated zoning. He said that because of 13 square feet, they will be prevented from using the property as they are allowed under the bylaw. Mr. Becker said that the bylaw does not say that because a two-family use is allowed in a General Residence District that every lot in the district is suitable for a two family.

Mr. Brooks said that there has been conversation in the Planning Board that this is a change of use. He said that his opinion is that this is an existing residential use and is proposed to be a residential use. He said that his understanding of the case law is that a change of use means that you are asking to use the property for something that is not allowed under the bylaw. Mr. Levy said that this is a dimensional variance. He said that they can build a single family house. He said that it is not a hardship because they cannot build a two family house. Mr. Brooks said that the Petitioner cannot use it for an allowed use in the district because of its odd shape, which creates a hardship on the owner. Mr. Becker said that he was not persuaded by that you can put a two family house there just because it is located in a General Residence District. He said that you can only put a two family there if you comply with the bylaw or get a variance. Mr. Brooks said that the consideration is whether 13 square feet will nullify or derogate from the bylaw. He said that no one will know because it is such a *di minimis* impact. Mr. Levy said that the Board sees that all of the time. Mr. Brooks said that this is quite irrelevant. He said that this is a multi family neighborhood and the neighbors have not objected in any way. He said that the *di minimis* noncompliance will clearly not derogate from the purpose of the bylaw. Mr. Levy said that the bylaw does not say approximately 5,000 square feet.

Mr. Redgate said that there are about five older neighborhoods in town where there were errors in calculating square footage. He said that there needs to be some leeway when things are so close. He said that he would feel much differently if this was an 8,000 square foot lot. He said that this is one percent of one percent.

Mr. Becker said that the provisions for variances are specific for reasons. He said that the conditions under which the Board can grant a variance are narrow because things outside of that are not meant to be granted. He said that he did not see how shape of the lot, soil conditions or topography applies to the 5,000 square feet per unit requirement. He said that 5,000 square feet per unit was intentional. He said that he did not see this as a hardship. Mr. Brooks said that a grant of a variance for 13 square feet of lot area per unit is no different from a grant to encroach into a setback or other relief. Mr. Becker said that unless there is a hardship that is due to shape of the lot, topography and soil conditions, there is no basis for a variance. Mr. Brooks said that the hardship is an inability due to an extremely *di minimis* lack of square footage due to an engineering error that was made a long time ago that created an irregularly shaped lot. Mr. Levy said that the size of the lot is what is preventing the owner from building what he

wants. Mr. Redgate said that the lot line is not perpendicular. Mr. Brooks said that the lot was laid out a long time ago.

Mr. Brossi said that by redeveloping the property, there will be fewer nonconformities, which is a good thing. Mr. Becker said that applies to special permits but not to variances. He said that the standards for granting a variance are higher. He said that the special permit part of the request is similar to what the Board sees for teardowns where a nonconforming structure is torn down and a compliant structure is put back. He said that the special permit request is not the issue but the request for a variance is. He said that he understands the frustration here.

Mr. Brooks said that he could argue that the hardship is financial in that the Applicant will not be able to realize the greatest benefit that he can from the property. Mr. Levy said that the bylaw does not require a maximum benefit. He said that he would be more persuaded if they could not build anything. He said that this has existed for over 50 years as a single family house and they have had the continued benefit of use of the property.

Mr. Becker read the Planning Board recommendation.

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

Mark Mooradian, 7 Pleasant Street, said that his family bought their house about 50 years ago. He asked about the setbacks for the new construction. He asked if the setback was measured from the edge of the main structure or the edge of the garage. Mr. Brooks said that it was measured from the edge of the garage.

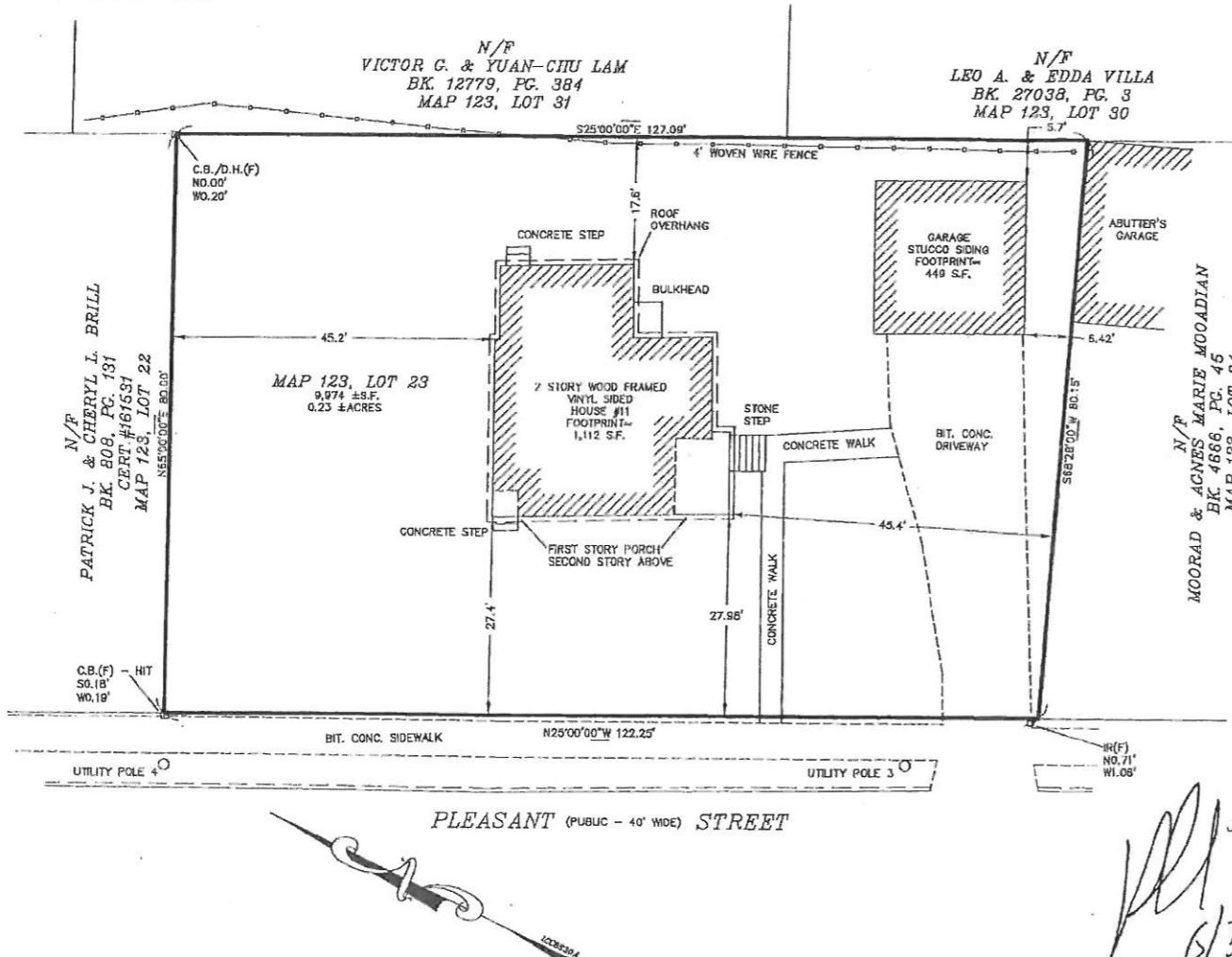
Mr. Mooradian said that he spoke with his mother about this project. He said that she has seen the plan and is comfortable with having this structure next to them.

Mr. Brooks requested that the Board allow the petition to be withdrawn without prejudice. 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.

EXISTING FRONT SETBACKS

EXISTING HOUSE SETBACKS FOR 500' OF FRONTAGE:

HOUSE #7 - 17.0'
HOUSE #11 - 27.3'
HOUSE #15 - 17.0'
HOUSE #19 - 16.7'
HOUSE #21 - 24.7'
HOUSE #33 - 27.4'



ZONED: R 10 - GENERAL RESIDENCE
AREA= 10,000 S.F.
FRONTAGE= 60 FT.
LOT WIDTH= 60 FT.
SETBACK= 30 FT.
SIDEYARD= 20 FT.
REARYARD= 10 FT.
LOT COVERAGE= 25%

EXISTING AREA USE TABLE

TOTAL LOT AREA = 9,974 S.F.
BUILDING FOOTPRINTS = 1,416 S.F.
OTHER IMPERVIOUS SURFACES = 1,133 S.F.
TOTAL IMPERVIOUS COVERAGE = 2,549 S.F.
EXISTING BUILDING COVERAGE = 0.142 (14.2%)

PLOT PLAN IN WELLESLEY, MASS.

SCALE: 1" = 20' DATE: DECEMBER 14, 2010

LOCATION: 11 PLEASANT STREET

PREPARED FOR:
BROSSI BROTHERS LIMITED PARTNERSHIP

ENGINEERS & SURVEYORS:



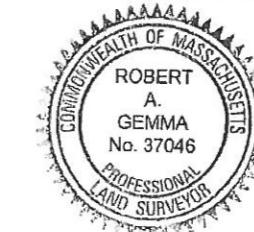
METROWEST ENGINEERING, INC.
75 FRANKLIN STREET
FRAMINGHAM, MA 01702
ROBERT A. GEMMA, PLS 37046

I CERTIFY THAT THE LOT AND BUILDINGS THEREON
PRE-DATE THE CURRENT TOWN OF WELLESLEY
ZONING BY LAWS.

I CERTIFY THAT THE LOT SHOWN AND BUILDING
THEREON ARE NOT WITHIN THE FEDERAL FLOOD
HAZARD AREA.

NOTES

THIS PLAN IS PREPARED FROM LINES OF OCCUPATION.
THE TIES TO THE LOT LINES ARE NOT TO BE USED IN
THE SETTING OF FENCES, HEDGES, ETC.



PROPOSED Z.B.A.
PLOT PLAN
IN
WELLESLEY, MASS.

