

**ZONING BOARD OF APPEALS**

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

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DAVID G. SHEFFIELDLENORE R. MAHONEY
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TELEPHONE
(781) 431-1019 EXT. 2208
web: www.wellesleyma.govJ. RANDOLPH BECKER, VICE CHAIRMAN
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DAVID L. GRISSINO

ZBA 2009-18
Petition of Christine Mello
28R Laurel Avenue

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, April 2, 2009 at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of CHRISTINE MELLO requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that construction of a 16 foot by 18 foot two story addition on a 5,182 square foot lot in a district in which the minimum lot size is 10,000 square feet, with no frontage, at 28R LAUREL AVENUE, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On March 16, 2009 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 Christine Mello (the "Petitioner"), who said that she is the owner of the property. She said that she spends approximately 20% of her time there because of a change in job position to New York. She said that she has owned the property for approximately five years but has not done any improvements to it. She said that the property is in a state of considerable disrepair. She said that she will need new windows, roof and chimney. She said that to make the renovations economically feasible, she would like to build an addition.

Ms. Mello said that her mother will be moving in with her at Laurel Avenue. She said that the existing house is a four room cottage. She said that the proposed construction will make it a two bedroom, two bath home.

The Board said that it is a very unique house. Ms. Mello said that it is an odd lot. She said that her builder is confident that he can build the addition with minimal disruption to the neighbors. The Board said that the neighbor at the back filed an objection with the Board. Ms. Mello said that she had not had any discussions about the plans with the neighbor.

The Board said that there was nothing in the plans that addressed drainage. The lot coverage will increase from 15% to 21%. There will be more impervious roof area instead of backyard. It appears on the plans that the property slopes from Laurel Avenue down to the Caroline path. Ms. Mello said that her property seems to be raised approximately eight inches at the front of the lot. She said that she does not get water in her basement. The Board said that it has to consider the impact to surrounding properties. The Board said that there are several technical solutions that Ms. Mello should discuss with her builder.

The Board said that the abundance of windows help to mitigate the bulk of the addition. Ms. Mello said that she is trying to model the home after one in Edgartown. She said that she wants a lot of windows and large casings.

David Himmelberger, Esq., said that he was representing the homeowners at 11 Caroline Street, Mr. Froh and Ms. Baker. He said that his clients have serious concerns. He said that he submitted a letter with attachments to the Board.

Mr. Himmelberger said that he believes that this was an illegally created lot. He said that Wellesley had a 10,000 square foot minimum lot size requirement as of 1937. He said that the lot at 28R Laurel Avenue was not created until 1944.

Mr. Himmelberger said that a major concern is the huge increase in the mass and bulk. He said that Drawings A2 and A3 show an increase in bulk of over 50% and an increase in the footprint of 36%. He said that the existing rear yard setback is 30.07 feet. He said that more than half of that space would be built into with the 16 foot deep addition.

Mr. Himmelberger said that the rear setback for lots created before 1985 is ten feet. He said that should apply to legally created lots. He said that the 18 foot rear setback in Table 3 of Section XIX of the Zoning Bylaw should apply.

Mr. Himmelberger displayed photographs from his client's property, looking into the backyard of 28R Laurel Ave.

Mr. Himmelberger said that the proposal is for a two story addition with a flat roof.

Mr. Himmelberger said that Drawing A2 shows the property slope. He said that the photograph taken from 28R Laurel Ave. shows a drop of three to five feet from the fence line to his client's property.

Mr. Himmelberger said that he disagreed with the Planning Board comment that the addition retained the modest look of the structure. He said that it would only be modest if viewed from the front of the house. He said that it is the rear of the property that is the biggest issue. He said that the addition will be blunt and snub-nosed. He said that it would be substantially more detrimental to the neighborhood than the existing nonconforming use. He said that there is no screening on the petitioner's property. He said that there is nothing to impede the flow of water onto his clients' property.

Mr. Himmelberger said that this is a self-created hardship. He said that it is a small lot that was created illegally. He said that the plans do not effectively convey the impact of the addition traveling into the existing peak. He said that, as viewed from the side, the house will be longer out the rear than it is across the front. He said that the existing house is a small cottage. He said that the proposed structure will not be a small cottage. He said that placing such a large structure on such a small lot will overburden the neighborhood, specifically his clients.

Nancy Nichols, 30 Laurel Avenue, said that she is an immediate abutter. She said that she has no objection to the proposed plans. She said that she has lived at 30 Laurel Ave. since 1977. She said that the property is part of a unique set of three lots. She said that 26 and 30 Laurel Avenue were divided off of one lot at the turn of the last century. The owner of 26 Laurel Avenue created the cottage at the back as a potential retirement home. The owner's husband passed away in the 1940's before she could move in.

Ms. Nichols said that there is a three-way shared driveway. She said that the Board granted a Special Permit for 26 Laurel Avenue recently for a substantial addition. She said that the property at 28R Laurel Ave. has been in shambles for quite a while. She said that the previous owner did not keep it up. She said that improvements have been made by subsequent owners since the Nichols arrived in 1977.

Ms. Nichols said that her property is not affected by the drainage or the position of the house. She said that the new construction will not impact her property. She said that she is in favor of the Board granting the Special Permit.

Walter Adams, 36 River Ridge, said that his property is a small lot. He said that it would be a mistake for the Town to penalize small lot owners because their lots are so small. He said that they should be able to make modest additions or enlargements. He said that in order to maintain a spectrum of housing in Wellesley, it is important that people with smaller lots be allowed the same abilities as those people on larger lots, within the limits of the required setbacks, to improve their properties.

Mr. Himmelberger said that his clients are asking that the existing Zoning rules be enforced. He said that they are not suggesting that Ms. Mello not be allowed to improve her property. He said that they are asking the Board to apply the finding with respect to being substantially more detrimental to the neighborhood.

The Board that the majority of petitions that come before it are for Section 6 findings. Mr. Himmelberger said that this is a unique situation.

Ms. Mello said that if there is an engineering solution to address drainage concerns, she is willing to do that. She said that her mother will be landscaping the property. She said that she is willing to plant trees along the property line for screening and for drainage if that is seen as a solution.

Ms. Mello said that she had come to Town Hall previously with another set of plans for a smaller addition. The Building Inspector told her that she could increase the size of the addition further into the rear of the property. She said that although she could have gone back 20 feet to the rear, she chose to only go back 16 feet. She said that the addition will be 18 feet by 16 feet. She said that it will not be massive.

The Board said that it appears that the Building Inspector's conclusion was that the rear setback is 10 feet for this property. He said that Mr. Himmelberger is asserting that Table 3 should apply to this lot, which is the most conservative for setbacks.

The Board said that although the neighbor at 30 Laurel Avenue does not have an objection to the proposed addition, it will appear as a long wall. The Board said that it often asks that additions be set in one foot. Setting the addition in would allow the existing eave line of the house to remain intact, would help to mitigate the perception of mass from the side yard, and would impact the rear elevation by making it taller, more slender and less massive. The Board said that small change would not affect the function of the interior space of the addition.

The Board said that the pitch of the roof could be made a little steeper.

Mr. Himmelberger asked why all of the addition had to be in the rear. He said that dormers could be added to the front using the existing space. He said that Drawing A3 shows a snub nosed protrusion that is significant. He said that it is fairly uncommon to have flat roofs. He said that there are other ways to achieve the square footage without increasing the mass by 50%.

The Board said that the addition could have been continued up to the ridge but was not. A gable roof could be five to six feet taller. The Board said that the proposed design makes less of an impact on both the front and the back in terms of overall height.

Mr. Himmelberger asked if the roof could be gabled to the existing peak and side dormers added. He said that his clients have no interest in the massive structure getting any larger.

The Board asked if the structure at 28R Laurel Avenue was built in accordance with a Building Permit. Mr. Himmelberger said that it was. The Board said that it would be governed by the 6 year Statute of Limitations. An enforcement action cannot be brought against it because it is essentially grandfathered.

The Board said that leads to the question of whether a grandfathered lot under Section 7 is entitled to the benefit of classification as a nonconforming lot under Section 6. Mr. Himmelberger said that the structure may be grandfathered but he did not believe that the lot is grandfathered. He said that the nonconforming lot was created in violation of the then existing Zoning bylaw for 10,000 square foot lots.

The Board said that there are two Statute of Limitations provisions under MGL, Section 7, for 6 years and for 10 years. He said that the 10 year Statute does not have the limitation that the structure had to be built in accordance with a Building Permit.

Mr. Himmelberger said that the nonconforming lot is the issue. He said that he would argue that the lot is not but, in the alternative, if the Board does rule it to be a pre-existing nonconforming lot, there should be a certain higher scrutiny that needs to be applied when the lot has been created illegally. He said that the plan was recorded in 1944 and that there was no Variance issued for the lot.

Mr. Himmelberger said that it would be hard to find precedent for the Board not finding that an increase of 36% in footprint and 50% in bulk would not be substantially more detrimental to the neighborhood. He said that most additions are relatively modest in comparison.

Mr. Himmelberger said that it is important to keep in mind the neighborhood in which this property is located. He said that this home is an aberration.

The Board said that it is important to define the neighborhood. Caroline Street is closer in character to Abbott Road than it is to Laurel Avenue. The lots on Laurel Avenue are significantly smaller than those on Caroline Street and Clovelly Road.

Mr. Levy said that it is a small house to begin with and it will still be one of the smaller houses in the neighborhood. The Board looks at how the addition will fit in with the neighborhood. The Board said that a 1,700 square foot house is a modest size. Mr. Himmelberger said that it is a modest house on a 10,000 square foot lot but not on a 5,182 square foot lot with no frontage.

The Board said that the two nonconformances are lot size and frontage.

Paul Twitchell, 36 Laurel Avenue, said that he has lived there since 1961. He said that he has seen many additions in the neighborhood. He said that he considers Laurel Terrace to be in the neighborhood and that not one house on Laurel Terrace has not been expanded. He said that the neighborhood has small lots. He said that the neighborhood is a good old-fashioned Wellesley neighborhood.

Mr. Himmelberger said that there are other ways to increase the interior space of the house that would not be substantially more detrimental to the neighborhood. The Board said that it has to consider the plans that are before it.

The Board said that with minor modifications, the proposed structure would not be substantially more detrimental to the neighborhood. Screening could be part of the drainage solution or, alternatively, there could be drywells.

The Board said that the lot was created more than 10 years ago and that the current homeowner did not create the hardship. The Board said that the issue of how the lot was created was no longer an issue for it to consider.

The Board said that although the plan seems to stretch the boundaries of a 5,000 square foot lot, it would not be substantially more detrimental to the neighborhood. The plan before the Board seems to be consistent with the Laurel neighborhood.

Statement of Facts

The subject property is located at 28R Laurel Avenue, on a 5,182 square foot lot in a 10,000 square foot Single Residence District, with no frontage.

The Petitioner is requesting a Special Permit/Finding that construction of a 16 foot by 18 foot two story addition on a 5,182 square foot lot in a district in which the minimum lot size is 10,000 square feet, with no frontage shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan dated 2/7/09, stamped by Leo B. White, Professional Land Surveyor, and Existing and Proposed Floor Plans and Elevation Drawings, dated 8/18/08, prepared by Gavin & Sullivan Architects, and photographs were submitted.

On March 20, 2009, the Planning Board reviewed the petition and had no objection to granting the request.

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 finding of this Authority that although construction of a 16 foot by 18 foot two story addition on a 5,182 square foot lot in a district in which the minimum lot size is 10,000 square feet, with no 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 construction of a 16 foot by 18 foot two story addition, subject to the following conditions:

1. The East Elevation of the proposed addition shall be located one foot to the west from the current location shown on the plans.
2. All fenestration that is shown on the plans shall remain through the issuance of a Building Permit.
3. All drainage solutions and/or landscaping solutions be constructed at the rear of the property for effective visual screening and drainage protection.

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 2009-18
Petition of Christine Mello
28R Laurel Avenue

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

David L. Grissino

cc: Planning Board
Inspector of Buildings
lrm

PRJCE
PARK

LAUREL ... AVE.

WASHINGTON
ST. (RFE.16)

#No: 30
LAUREL AVE.
DWELLING

#No: 26
LAUREL AVE.
DWELLING



W. White, RLS.
9784904799

EXISTING COMMON DRIVE
EXISTING COMMON DRIVE

Plot Plan
WELLESLEY, MASS.
#28 REAR LAUREL AVE.
SCALE 1" = 20'.
FEB. 07, 2009

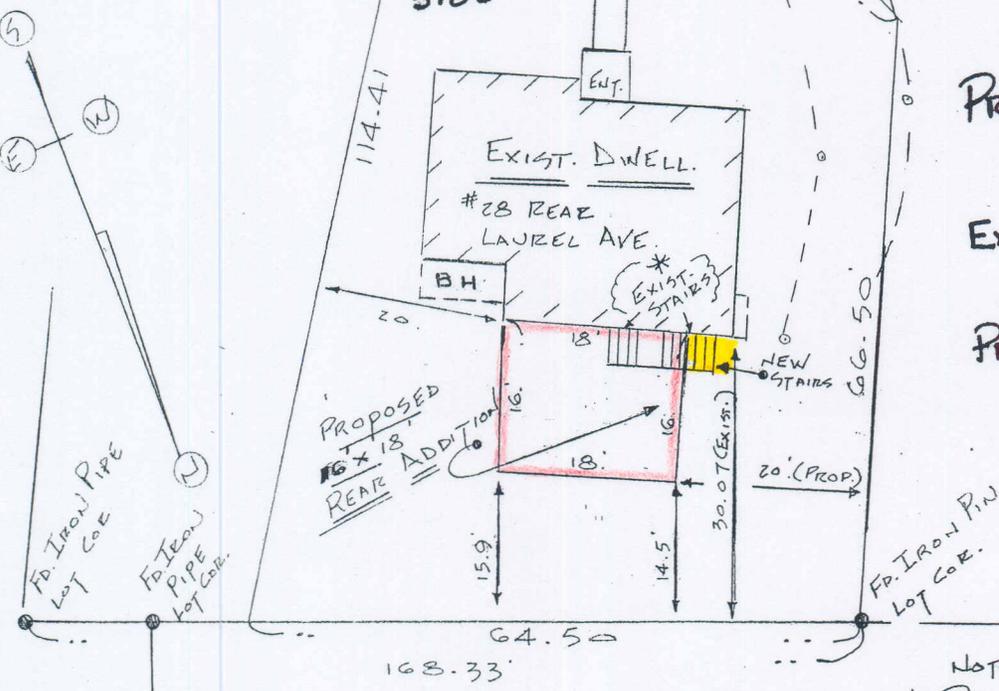
AREA DISTRICT: SRD 10
ZONING DIST.

EXIST. % LOT COVERAGE: 15.39%

PROPOSED % " " 20.95% (FOOTPRINT)
28.99% LIVING SPACE

EXIST. COVERAGE OF BUILDING
798 SQ. FT.

PROPOSED MAX. BLDG. COVERAGE
(A) 1086.59 FT. (FOOTPRINT)
(B) 1498 SQ. FT. (LIVING SPACE)



NOTE:
* REPLACE EXISTING STAIRS WITH
5' X 5' STAIRS AND LANDING.

#No: 11 CAROLINE ST.

CAROLINE ST.

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MASS 02222
2009 MAR 16