

**ZONING BOARD OF APPEALS**

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web: www.wellesleyma.govJ. RANDOLPH BECKER, VICE CHAIRMAN
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Petition of Gerald Kelly
118 Oak Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, October 6, 2011, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of GERALD KELLY requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that construction of a second story addition over an existing nonconforming structure with less than required side yard setbacks on a corner lot, in a 10,000 square foot Single Residence District, at 118 OAK STREET, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Record Owner of Property: 118 Oak Street LLC

On September 19, 2011 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., Judith Martin, Property Manager, and Gerald Kelly (the "Petitioner").

Mr. Himmelberger said that the request is for a Special Permit for a second floor addition to the home that was built in 1936. He said that at the time that the house was built it was conforming. He said that when the Town passed bylaws that dealt with setbacks, the house became nonconforming because of a side yard setback of 13.5 feet. He said that it is the Petitioner's position that the proposed structure will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Mr. Himmelberger said that when the plans and application were initially submitted, they called for a second floor addition as well as a peaked roof with attic space above it. He said that subsequent to that submission, the Petitioner decided to scale the plans back and drop the height of the building from 31 feet to 22 feet. He said that the legal ad described the project in such a way as to be equally applicable to either set of plans. He said that no member of the public came to the Zoning Office with inquiries or opposition to the first set of plans. He said that he is of the opinion that dropping the height to the existing height and adding a series of dormers is di minimis. He said that the Petitioner has spoken with the immediate abutters and neighbors and there was no opposition.

Mr. Himmelberger said that the Planning Board declined to review the revised plans and requested that the matter be deferred. He said that, given that the proposed addition will be fully within the existing footprint and is a reduction in size and massing from what was originally submitted, he requested that the Board entertain the petition for the Special Permit at this hearing.

The Board asked how the roofline will work with the four dormers at the existing ridgeline. The Board said that the front and rear dormers should be hipped to be in keeping with the architectural look of the rest of the roof lines. The Board said that the roof plan must be revised to show the changes to the dormers and the corrected configuration of the front hips and valleys.

The Board said that the property is located on a corner lot.

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 118 Oak Street, on a corner lot in a 10,000 square foot Single Residence District, with less than required side yard setbacks.

The Petitioner is requesting a Special Permit/Finding that construction of a second story addition over an existing nonconforming structure with less than required side yard setbacks on a corner lot, in a 10,000 square foot Single Residence District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan dated 9/7/11, stamped by Kenneth B. Anderson, Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 9/6/11, revised 9/12/11 & 9/26/11, prepared by Albert Costa, Architect, and photographs were submitted.

On October 5, 2011, the Planning Board reviewed the petition and recommended that action on the Special Permit be deferred.

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 second story addition over an existing nonconforming structure with less than required side yard setbacks on a corner lot 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 second story addition over an existing nonconforming structure with less than required side yard setbacks on a corner lot, in accordance with the submitted plot plan and the construction drawings submitted on 9/26/11.

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.

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 G. Sheffield

cc: Planning Board
Inspector of Buildings
lrm

