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TOWN OF WELLESLEY



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66-61

1967 JAN 15 11:47

BOARD OF APPEAL

RICHARD O. ALDRICH
DANA T. LOWELL
F. LESTER FRASER

KATHARINE E. TOY, CLERK
TELEPHONE
235-1664

Appeal of Philip Foss Lackey and Sarah A. Lackey

Pursuant to due notice the Board of Appeal held a public hearing in the hearing room on the second floor of the Town Hall at 8:10 p.m. on December 14, 1966, on the appeal of Philip Foss Lackey and Sarah A. Lackey from the refusal of the Inspector of Buildings to issue a permit to them to construct an addition on the attached garage on the side of their dwelling at 9 Windemere Road. The reason for such refusal was that said addition would violate the requirements of Chapter IV, Section I (a) of the Building Code which requires that all Type V buildings shall be placed at least thirty feet from the line of any public or private street and fifty feet from the center of the street, and Section XIX of the Zoning By-law which requires that all dwellings on lots bounded by more than one street, shall provide yards next to the streets at least thirty feet in width. Said appeal was also taken under the provisions of Chapter 40A, Section 15, of the General Laws.

On November 15, 1966, the appellants filed their application with this Board seeking permission to construct an addition on the side of their dwelling and thereafter due notice of the hearing was given by mailing and publication.

Philip F. Lackey spoke in favor of the request at the hearing.

Statement of Facts

The dwelling involved is located within a single-residence district requiring a minimum lot area of 10,000 square feet. It was built in 1940, approximately 38.9' from the street line on the northerly side.

The appellants seek permission to construct an addition 12' x 20.3' on the northerly side of their dwelling in order to provide a second garage

It was stated at the hearing that the appellants have two cars, one of which has to remain outside now. The proposed addition, if built, will be only slightly less than three feet short of the required setback from the street; all other houses in the neighborhood have two-car garages and in the view of the appellants the proposed addition will not only benefit them personally and improve the house, but it will also be an improvement to the neighborhood. It was also pointed out that the house involved was built prior to the construction of Windemere Road extension which was laid out originally to continue straight. However, when it was constructed, it curved slightly toward the house involved thereby giving rise to the present problem in satisfying the requirement that the front corner of the proposed addition provide a thirty-foot setback from the street.

A plot plan was submitted drawn by Gleason Engineering Company, dated October 31, 1966, which showed the location of the dwelling on the lot and the proposed addition. Said plan showed the proposed addition to be 26.9' from Windemere Road on the northerly side and 37' from Windemere Road on the westerly side.

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Decision

The Board has given careful study to all the facts in this case and has taken a view of the locus. The house was built in 1940 and adjoined other land of the same owner on April 1, 1940. The Board is, therefore, not authorized to make a special exception under Section XIX of the Zoning By-law as said section authorizes the Board to grant such exceptions only if on April 1, 1940, the lot was owned of record under a separate and distinct ownership from adjacent lots. The Board, however, considered the appeal under the provisions of General Laws, Chapter 40A, Section 15, and in its opinion, the desired addition would not reduce the value of property in the neighborhood and a literal enforcement of Section XIX of the Zoning By-law and Chapter IV, Section I (a) of the Building Code would cause a substantial hardship to the appellants which can be avoided without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning By-law. The house is located on a curve on the street where technically it must be set back at least thirty feet from each street line. However, if the proposed addition is constructed, it will not establish a precedent for other houses on the street as the house involved is the only one affected by the unique layout of Windemere Road at this point. While one corner of the proposed addition will lie only 26.9' from Windemere Road on the northerly side, it will be 37' from the street line on the front.

In view of the evidence presented, it is the opinion of this Board that the setback requirement of Chapter IV, Section 1, of the Building Code did not contemplate its application in a case such as this and should be varied in this instance and that a special exception can be granted from the terms of Section XIX of the Zoning By-law under the provisions of Chapter 40A, Section 15, of the General Laws.

Accordingly, the appeal is granted and the issuance of a permit for the proposed addition as shown on the plan submitted and on file with this Board is hereby authorized.

Richard O. Aldrich
Richard O. Aldrich
Dana F. Lowell
Dana F. Lowell
F. Lester Fraser
F. Lester Fraser

Filed with Town Clerk _____

PLAN OF LAND
 IN
WELLESLEY, MASS.
 OWNED BY
PHILIP FOSS & SARAH A. LACKEY
 SCALE 40 FEET TO AN INCH
 OCTOBER 31, 1966.
 GLEASON ENGINEERING COMPANY

