

TOWN OF WELLESLEY



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ZONING BOARD OF APPEALS

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ZBA 99-69

Petition of Gerald F. and Elizabeth M. Devlin
6 Dinsmore Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, September 23, 1999 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) at the Town Hall, Wellesley, on the petition of GERALD F. AND ELIZABETH M. DEVLIN requesting a Special Permit/Finding that the demolition of the existing dwelling and construction of a new conforming two-story 74 foot by 34 foot dwelling on a lot with the required frontage, but on an unaccepted private way rather than on a public way, at 6 DINSMORE ROAD, in a Single Residence District, shall not be substantially more detrimental to the neighborhood than the existing structure.

On September 9, 1999, the petitioners 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 Leslie Shea, counsel for the petitioners, who were also present. Mr. Shea said that the Devlins had bought their home last December. The house is one of four homes located on a graveled dirt road. The house is a one-story 1,984 square foot ranch on a 31,000 square foot lot. They would like to demolish the existing house and build a new two-story home with a slightly decreased footprint closer to Dinsmore Road.

Mr. Shea explained that the Planning Board has stated that the street is an unaccepted way, and that there is a procedure which should be followed regarding construction on an unaccepted way. This procedure was enacted 15 years ago due to the concern of Steve Black, prior Fire Chief, that new homes not be constructed on substandard roads. This house already exists on the lot, and would create no more traffic with a new house than does the existing house. Therefore, the Planning Board procedure does not apply to this situation.

Mr. Shea said that this case would not set a precedent. The three neighbors do not want the road improved. The Devlins must either go before the Planning Board seeking to potentially improve the road contrary to their neighbors' wishes or come before the Zoning Board. If the Board denies the petition, the Devlins will improve the existing house in a conforming manner.

The Board stated that the Zoning Bylaw applies to every situation, and does not exclude demolitions and rebuilds. The Planning Board does not necessarily have to require major improvements to the road.

Theodore Parker, 9 Dinsmore Road and Joanne Stern, 12 Dinsmore Road, supported the petition.

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After further discussion, the Board decided that the replacement of the existing residence would not be substantially more detrimental to the neighborhood than the existing structure.

The Board voted unanimously to grant the Special Permit for the demolition of the existing house and construction of the new conforming dwelling on a lot with frontage on an unaccepted private way.

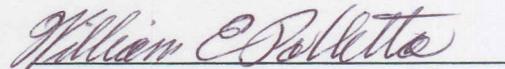
Subsequent to the Public Hearing, the Board was advised by Albert S. Robinson, Town Counsel, that the Board lacked jurisdiction to rule on the petition as, until the Planning Board had ruled on the adequacy of the way pursuant to Section XIX-A of the Zoning Bylaw, there was no determination as to whether or not the lot at 6 Dinsmore Way had or did not have frontage. If the Planning Board ruled that the way was adequate, the lot would be conforming and the petitioners could demolish the existing dwelling and build a conforming dwelling without seeking relief from the Board of Appeals. If the way was deemed inadequate and the petitioners did not want to comply with the Planning Board's requirements to make the way adequate, the petitioners could then file a petition for relief from the Board of Appeals.

After due notice by mailing and publication, the Board of Appeals reopened the Public Hearing on November 16, 1999, and voted unanimously to withdraw the Special Permit granted at the Public Hearing on September 23, 1999 on the grounds of lack of jurisdiction to grant the requested relief.

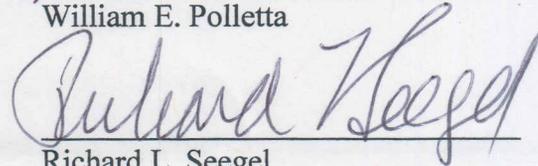
Therefore, this petition is hereby dismissed.



Kendall P. Bates, Chairman



William E. Polletta



Richard L. Seegel

Cc: Planning Board
Inspector of Buildings
Town Clerk
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