

**ZONING BOARD OF APPEALS**

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ZBA 2012-10

Petition of Kevin & Shari O'Leary
68 Dover Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, February 2, 2012, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of KEVIN & SHARI O'LEARY requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that construction of a 2.5 foot by 11.1 foot one-story garage extension and construction of a 10.5 foot by 22.5 foot second story addition over an existing structure with less than required right side yard setbacks, on a 9,578 square foot lot in a district in which the minimum lot size is 10,000 square feet, at 68 DOVER ROAD, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On January 17, 2012, 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 Kevin O'Leary (the "Petitioner"), who said that the request is for a second story addition above an existing nonconforming structure with less than required side yard setbacks on a nonconforming lot.

Mr. O'Leary said that they had submitted a request for a Special Permit/Finding in 2008 but withdrew that request because of some potential design concerns. Mr. O'Leary said that those issues have been addressed in the current plans.

The Board asked if the two-story addition at the back of the house that was permitted in 1985 was ever built. Mr. O'Leary said that the family room addition was done prior to their purchase of the house. The Board said that the application showed the addition at the plane of the house but the as-built plans show the addition moved to conform to the setback requirements.

The Board asked if the footprint will be changed. Mr. O'Leary said that in the original application that was submitted, the request was for a 2.5 foot by 11 foot extension to the garage. He said that after consulting with the Wetlands Protection Committee (WPC), he was willing to amend his application to eliminate that. He said that the current request is only for the second floor addition without any change to the footprint.

The Board said that the plot plan that was submitted shows the additional 2.5 by 11 feet. The Board said that a revised plot plan should be submitted.

The Board asked if the O'Leary's had spoken with the neighbors to the right when looking at the house. Mr. O'Leary said that they have spoken with all of their neighbors. The Board said that the addition will rise up above the neighbor's house on the right. The Board said that the addition will face the north side of the neighbor's house so it will not impact sunlight. The Board said that it is a fairly open area in between the houses.

The Board confirmed that the 2.5 foot by 11 foot garage extension has been eliminated from the request. Mr. O'Leary submitted revised construction drawings that show that the garage extension has been eliminated.

The Board said that although there will be a significant increase in the mass on the side of the house, the addition will be in a gabled side so it becomes less dominating as it goes up. The Board said that in looking at the plans, it appears to be the best place to try to put the bedroom.

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 68 Dover Road, on a 9,578 square foot lot in a district in which the minimum lot size is 10,000 square feet, with a minimum right side yard setback of 13.1 feet.

The Petitioner is requesting a Special Permit/Finding that construction of a 10.5 foot by 22.5 foot second story addition over an existing structure with less than required right side yard setbacks, on a 9,578 square foot lot in a district in which the minimum lot size is 10,000 square feet, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan dated 12/21/11, stamped by Michael A. Pustizzi, Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 1/2012, prepared by Homefolks Design, and photographs were submitted.

On January 30, 2012, the Planning Board reviewed the petition and recommended that the Special Permit be denied.

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 construction of a 10.5 foot by 22.5 foot second story addition over an existing structure with less than required right side yard setbacks, on a 9,578 square foot lot in a district in which the minimum lot size is 10,000 square feet, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, as it shall neither increase an existing nonconformity nor create a new nonconformity.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for construction of a 10.5 foot by 22.5 foot second story addition over an existing structure with less than required right side yard setbacks, on a 9,578 square foot lot in a district in which the minimum lot size is 10,000 square feet, subject to the conditions:

1. Revised Architectural Plans 1 & 2 without the garage extension shall be substituted for Plans A-1 & A-2 that show the garage extension.
2. A revised Plot Plan shall be submitted that shows the proposed footprint without the garage extension.

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.

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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.

Richard L. Seegel, Chairman

J. Randolph Becker

Walter B. Adams

cc: Planning Board
Inspector of Buildings
lrm