

TOWN OF WELLESLEY



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ZONING BOARD OF APPEALS

2000 NOV 14 P 11: 06

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ZBA 2000-82
Petition of Gail A. Mann and
Howard S. Kirsten
10 Marigold Avenue

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, October 26, 2000 at 7:30 p.m. in the Selectmen's Meeting Room (Conference Room B) at the Town Hall, 525 Washington Street, Wellesley, on the petition of GAIL A. MANN AND HOWARD S. KIRSTEN requesting a variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw to allow construction of a one-story 7 foot by 12 foot addition, with less than the required right side yard setback, to their conforming dwelling at 10 MARIGOLD AVENUE, in a Single Residence District.

On October 6, 2000, 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 Gail Mann, who asked the Board to reissue the variance that was originally granted to them in August, 1998. At that time, she came before the Board requesting a variance to build a mudroom on the right side of her house which would be 18.1 feet from the right side lot line. The problem is that the house is set far to the right side on the lot. There is no garage. Entrance is directly into the kitchen. The home at 6 Marigold Avenue had been granted a variance in 1993 for construction 15.5 feet from the side line; and 4 Marigold Avenue had a 13.8 foot side yard setback. Her house, therefore, although nonconforming, would not be more nonconforming than the two adjacent houses on the street.

Ms. Mann explained that after they were granted the variance, they hired Peter Berquist to build the addition. Mr. Berquist had requested a substantial down payment prior to construction. He never pulled a building permit and kept delaying the project. After 18 months, they have gotten some of the money back, but the variance has elapsed. She would like to have the variance granted again so they can finally build the mudroom.

The Board noted that the Planning Board maintained its objection to the petition because the mudroom could be conforming if the width were reduced 1.9 feet. Ms. Mann said they had tried to design a conforming mudroom, but without the variance, the mudroom would not be large enough to be useful. The requested width is the minimal dimension necessary to build the mudroom.

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The Board stated that it was concerned with allowing a conforming lot to become nonconforming, particularly as there do not appear to be any grounds to grant the variance. Ms. Mann said that had her builder been honest, the mudroom would have been built by now and she would not have had to appear before the Board.

No other person present had any comment on the petition.

Statement of Facts

The subject conforming property is located at 10 Marigold Avenue, in a Single Residence District, on a 10,000 square foot lot.

The petitioners are requesting a variance to construct a one-story 12 foot by 7 foot addition, which will have a minimum right side yard clearance of 18.1 feet.

On August 20, 1998, the petitioners appeared before the Board of Appeals with the same variance request, which was granted (ZBA 98-71) and dated September 8, 1998. Due to the problems with their builder, as described by Ms. Mann at the Public Hearing, the addition has not been constructed and the variance expired on September 8, 1999.

A Plot Plan dated September 5, 2000, drawn by Bruce Bradford, Professional Land Surveyor; Existing and Proposed Floor Plans and Elevations dated September 5, 2000, drawn by Francis Sullivan, Architect; and photographs were submitted.

On October 17, 2000, the Planning Board reviewed the petition and maintained its objection to the petition stated in its review of August 18, 1998; namely, that the addition could be modified by reducing the width by 1.9 feet to comply.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The subject dwelling is conforming in regard to all zoning requirements.

It is the opinion of this Authority that because of the shape of the lot and the location of the house on the lot, a literal enforcement of the provisions of Section XIX of the Zoning Bylaw would involve a substantial hardship to the petitions, and that desirable relief may be granted without substantially derogating from the intent or purpose of the Zoning Bylaw.

Therefore, the requested variance is granted, as voted unanimously by this Authority at the Public Hearing, to allow construction of a one-story 12 foot by 7 foot addition with a minimum right side yard clearance of 18.1 feet, subject to construction in accordance with the submitted plot plans and construction drawings.

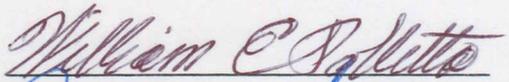
The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed construction plans.

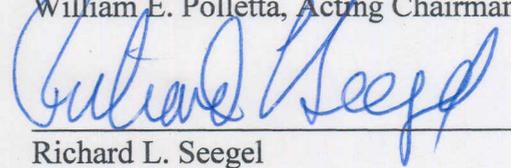
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If the rights authorized by this variance are not exercised within one year of the date of grant of said variance, they shall lapse and may be re-established only after notice and a new hearing pursuant to Section XXIV-D of the Zoning Bylaw.

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.

Cc: Planning Board
Inspector of Buildings
edg


William E. Polletta, Acting Chairman


Richard L. Seegel


Robert A. Bastille

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