

**ZONING BOARD OF APPEALS**

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DAVID G. SHEFFIELDLENORE R. MAHONEY  
EXECUTIVE SECRETARY  
TELEPHONE  
(781) 431-1019 EXT. 208ROBERT A BASTILLE  
J. RANDOLPH BECKER  
ROBERT W. LEVY

ZBA 2005-44

Petition of Sherin and Anashua Elwy  
26 Laurel Avenue

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, May 12, 2005 at 7:30 p.m. at the Town Hall, 525 Washington Street, Wellesley, on the petition of SHERIN AND ANASHUA ELWY requesting a Variance pursuant to the provisions of Section XXIV-D and Section XIX of the Zoning Bylaw to construct a one-story attached garage with less than required left side and right side yard setbacks, and construct a two-story addition with less than required left side yard setback, at 26 LAUREL AVENUE, in a 10,000 square foot Single Residence District.

On April 25, 2005, 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 Sherin Elwy, who said that they have a son who has a neuro-muscular condition that affects everything from his eyesight to his heart and muscles.

The Board asked if Mr. Elwy's son currently uses a wheelchair. Mr. Elwy said that he uses a walker. As he gets older, the muscles will continue to stiffen up until he stops growing.

Mr. Elwy said that the main obstacle that they are looking to overcome is accommodation for their son's needs. He is four years old now and can be carried up and down stairs. Mr. Elwy said that they are looking to demolish the existing detached garage and construct an attached garage so that their son can get in and out of the house.

The Board said that they are asking for a Variance. The standards for granting a Variance are very steep. The Board asked if Mr. Elwy is familiar with the requirements for a Variance.

The Board said that the other petitions tonight were for Special Permit/Findings which involve pre-existing nonconformities that will be altered. There will be no further nonconformities created. The Elwys are looking to create a nonconformity by constructing a garage with a side setback of less than 30 feet. The Board said it is a fairly new bylaw that requires that a side facing garage have a 30 foot setback from the side lot line.

The Board read from the State Zoning Regulations,

owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located.....

The Board said that it can make three findings. The Elwys may have an argument for the shape of the lot.

The Board said the second standard that it must meet is whether

literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner.....

The Board said that the third finding would be,

that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

The Board said that the Town bylaws are more specific but contain the same three findings.

The Board said that it had received letters from the Architect and the Elwys. An alternative plan was submitted that has a conforming garage facing toward the back. The problem with that plan is that there is more pavement and a much smaller backyard. The angled design, which is nonconforming, has less pavement.

The Board said that the alternative plan would meet all of the requirements. There would be a wheelchair ramp and the garage entrance would be a little wider. Mr. Elwy said that the main issue with that would be that they would have to go all the way to the back of the yard to turn around to enter the garage.

Peter Sachs, Architect, said that the garage plan that faces to the side provides 10 to 12 extra feet of linear length for their son to use a ramp. The actual slope of the ramp is diminished more than the one presented in the alternative plan.

The Board said that the first leg of the ramp is 9.6 feet and the second leg of the ramp is 15.6 feet. That would be about 25 feet of run, for a 25" rise in slope. The Board said that there are six steps shown on the plan. Mr. Sachs said that those steps are for the Elwys' son. He is able to climb steps. The Board confirmed that the steps have smaller risers of approximately 4 inches.

The Board asked where the proposed first floor bedroom would be. Mr. Elwy said that it would be next to the bathroom.

The Board confirmed that the relief being sought was for the 30 foot setback for the side-facing garage door. The Board asked how close the Mello house is to the lot line. Mr. Sachs said that it is probably around 20 feet.

Mr. Elwy said that they have spoken to both of their neighbors and they approved of the plans. For the Mello house, moving the garage actually creates a better situation.

The Board asked if there has been any discussion about a land swap with the neighbor. Mr. Elwy said that he had not spoken with his neighbor about a land swap. Mr. Sachs said that it was his experience that those types of transactions involve long and protracted negotiations.

The Board read the Planning Board's recommendations:

The Planning Board is opposed to the granting of this request. In review of the application the Board felt that a minor change to the plan could bring the project into compliance with a Special Permit Finding.

Mr. Sachs asked if the Planning Board was referring to the alternative plan. The Board said that it was not sure if that was what they were referring to.

The Board asked about turning the garage. Mr. Sachs said that they had tried to do that. The Board said that garage can be within 20 feet but the entrance to the garage must be 30 feet from the lot line.

The Board asked about the legal status of the driveway. It crosses three properties. Mr. Sachs said that there is an easement that is included in the deed that was submitted.

The Board read from the Town's Zoning Bylaws:

to grant upon appeal or upon petition, with respect to particular land or structures, a variance from the terms of this Zoning Bylaw where the Permit Granting Authority specifically finds that

- a. Literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant owing to circumstances relating to: i) soil conditions, ii) shape, or iii) topography of such land or structures, especially affecting such land or structures but not generally affecting the zoning district in which it is located; and the hardship shall not have been self-created; and
- b. Desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of this Zoning Bylaw.

The Board said that it could find that it would not be hurting the public good by granting the Variance. It would not be going against the intent of the bylaw.

The Board said that the Elwys do have an unusually shaped lot. The hardship would be whether or not they would have more pavement because the alternative plan is functional. The ramp might be steeper but it does work.

The Board said that there does not have to be no other alternative for it to be found as a hardship.

The Board said that the alternative plan has a wall running parallel along the lot line that is much longer. On the proposed plan the wall jogs away from the lot line.

The Board said that the intent of the bylaw is to ensure adequate area for vehicles entering and exiting the garage. The Board asked if there would be sufficient turning radius without encroaching on the neighbor's property. Mr. Sachs said that could be achieved by using the easement.

The Board confirmed that there is a small stone wall that would prevent them from backing up onto the Mello property.

The Board said that there are mitigating circumstances.

The Board said that it could find that literal enforcement of the bylaw, Section XIX B:

Where the entrance of an attached or detached garage, built in conjunction with a one-family dwelling faces a property boundary line other than the street line there shall be a minimum distance of 30 feet from the garage entrance to that line. The intent of this requirement is to ensure adequate area for vehicles entering and exiting the garage.

would involve substantial hardship to the petitioner owing to the shape of the lot. That shape especially affects this parcel and does not affect the zoning district in which it is located.

The Board said that it could find that the hardship is not self-created.

The Board said that it could find that relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

#### Statement of Facts

The subject property is located at 26 Laurel Avenue, in a 10,000 square foot Single Residence District, with a minimum left side yard setback of 12.1 feet.

The petitioners are requesting a Variance to construct a one-story side-facing attached garage with a minimum right side yard setback of 20.1 feet and a minimum left side yard setback of 12.1 feet, and to construct a two-story addition with a minimum left side yard setback of 12.1 feet.

A Plot Plan dated 4/11/05, stamped by Todd P. Chapin, Registered Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 4/13/05, drawn by Peter Sachs, and photographs were submitted.

Also submitted was a copy of the Quitclaim Deed for a parcel of land

Containing 12,368 square feet, more or less, and also being shown as lot marked "12,368 square feet" on a plan recorded with Norfolk Country Registry of Deeds, in Book 2506, Page 239.

Subject to and together with rights in the driveway marked "common driveway" as shown on said last mentioned plan, and as set forth in an instrument recorded with said Deeds, in Book 2081, Page 115.

On May 10, 2005, the Planning Board reviewed the petition and said,

The Planning Board is opposed to the granting of this request. In review of the application the Board felt that a minor change to the plan could bring the project into compliance with a Special Permit Finding.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the Public Hearing. The subject structure does not conform to the current Zoning Bylaw, as noted in the foregoing Statement of Facts.

It is the opinion of this Authority that the hardship created by the shape of the lot, with a maximum width of 80 feet at the midpoint, narrowing to 35 feet at the rear of the lot, is not self-created. Literal enforcement of the provisions of Section XIX of the Zoning Bylaw would involve a substantial hardship to the petitioners. Furthermore, the grant of a Variance would not affect the Zoning District in which it is located nor nullify or derogate from the intent or purpose of the Zoning Bylaw.

Therefore, the requested variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw is granted to allow construction of a one-story side-facing attached garage with a minimum right side yard setback of 20.1 feet and a minimum left side yard setback of 12.1 feet, and construction of a two-story addition with a minimum left side yard setback of 12.1 feet.

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

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

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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.

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Cynthia S. Hibbard, Acting Chairman

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David G. Sheffield

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Robert W. Levy

cc: Planning Board  
Inspector of Buildings  
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