

**ZONING BOARD OF APPEALS**

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ZBA 2005-51
Petition of Falguni Singh
33 Edgemoor Avenue

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, June 9, 2005 at 7:30 p.m. at the Town Hall, 525 Washington Street, Wellesley, on the petition of FALGUNI SINGH requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that removal of the existing nonconforming roof and construction of a correctly pitched roof at the same height as the existing roof, and repair/replacement of the foundation, with less than required left side and front yard setbacks, at 33 EDGEMOOR AVENUE, in a 10,000 square foot Single Residence District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Presenting the case at the hearing were Falguni and Sanjeev Singh. Mr. Singh said that they had previously come before the Board with a proposal to tear down the existing structure. He said that petition was denied by the Board. (The record shows that petition was withdrawn without prejudice.)

Mr. Singh said that they have a Demolition Permit from the Building Department to strip the outside and inside of the house, and the roof shingles. He said that there were two layers of rubber roof on top of half-inch plywood. There were two by fours on the flat and three layers of asphalt shingles under that. There was two feet of water sitting on top of the rubber roof.

Mr. Singh said that he had met with the Building Inspector and they had discussed the scope of the work to be done.

Mr. Singh said that the sub-contractor took off the roof structure as it was coming down by itself. The Building Inspector issued a stop order on the basis that the amount of work that was allowed had been exceeded. The Demolition Permit was only for the removal of roof shingles and not for removal of the roof structure.

Mr. Singh said that some of the roof structure is in the front and side setbacks. He said that they are requesting a Special Permit to work on the roof area and to replace the foundation in the setback areas.

The Board asked if they plan to replace the foundation in the same location. Mr. Singh said that they would replace the foundation in the same location.

Mr. Singh said that the foundation that is currently there is was constructed in a variety of ways. Most of it is blocks. There is no cellar floor. It is a framed over wood cellar floor. The structure does not appear to be very modern or safe.

The Board said that there are no dimensions on the plans. It is difficult to visualize what is there now versus what they propose to do.

The Board asked if the plan is to remain within the existing footprint. Mr. Singh said that the surveyor's map has dimensions on it. They will be staying within the footprint that is shown on that map.

The Board asked about the existing covered basement. Mr. Singh said that there was a basement that had an asphalt shingle roof over it with bubble domes to let light in.

The Board asked if the basement is finished under the house. Mr. Singh said that it is not.

Mr. Singh said that the existing covered basement is not shown on the floor plans because they will not replace the foundation in that section. He said that they are abandoning that section because it has no structure over it.

The Board asked about the proposed change to the roofline. Mr. Singh said that is shown on the elevation drawings. Mr. Singh displayed on the plans the proposed rooflines.

The Board asked about existing walls. Mr. Singh said that the walls are all existing. They did not take out any partition walls. The Board said that there is no wall in one section on the south side of the house. Mr. Singh said that there had been a large window there that went down to about one foot off of the ground.

The Board asked if the petitioners would demolish the existing frame walls when they replaced the foundation. Mr. Singh said that they will be jacking the existing house up off of its foundation and then pouring a new foundation.

Mr. Singh said that they wanted to look at the structure of the house because they are considering adding a conforming structure on top of it. The purpose of the Demolition Permit was to see the structure of the house.

The Board asked about the proposed addition. Mr. Singh said that they planned to add a conforming addition to the nonconforming structure.

The Board said that they have an undersized lot and that any structure that is ever built on this lot will be nonconforming.

Mr. Singh said that they will respect the modern setbacks on the proposed addition.

The Board asked if they were going to have a 16.5 foot side yard on each side. Mr. Singh said that they would.

The Board asked if there was any redeeming quality to the structure that is there now. The Board asked if what they really wanted to do was to demolish the existing structure and rebuild on the same footprint. Mr. Singh said that they have been before the Board twice for that. The Board said that those proposals were not to build on the same footprint.

Mr. Singh said that the existing house takes up more space than what they would have if they demolished it and then built a conforming house.

The Board asked about the existing patio on the foundation. Mr. Singh said that would be going away. The Board asked what the setback would be there. Mr. Singh said that the distance from the house to the lot line is about 17 feet.

The Board asked for The Building Inspector's opinion regarding demolition and reconstruction on the same footprint.

The Building Inspector said that it was his professional opinion that the house should come down. He said that the foundation construction is piecemeal, and the floor framing in the basement is poor. The Building Inspector said that he had looked at the structure and it does not appear to be sound.

The Building Inspector said that when he got a call from a neighbor about the roof, he went out to the property. He issued a stop work order when he determined that more work was done than what was permitted for. The Building Inspector said that the roof was going to fall apart anyway. Mr. Singh had probably improved the safety of the situation by taking the roof off.

The Board asked Mr. Singh if he wanted to demolish the structure and rebuild on the same footprint. Mr. Singh said that their preference in December and then again in February was to demolish the structure. The plan was to eliminate the front, right side and rear yard nonconformities. The structure would encroach 3 feet further into the left side yard setback. The proposed structure was 2 ½ stories, with an attic build-out. The Board was not in favor of that plan. Mr. Singh said that they now just want to work on the existing structure.

The Board asked the Building Inspector about the stop work order. The Building Inspector said that Mr. Singh had demolished a nonconforming portion of the structure without a Special Permit.

The Board said that it is a difficult lot. Mr. Singh has a right to build something there. The Board said that it could not allow Mr. Singh to increase a nonconformity on the property.

Mr. Singh said that the benefit of the existing structure is that it is 26 feet wide. A conforming structure would only be 20 feet wide. The Board said that it could grant a Special Permit for demolition of the structure and reconstruction on the same footprint.

The Board asked how much of the foundation Mr. Singh was looking to replace. Mr. Singh said that he will be replacing the entire foundation.

James Krasner, 32 Edgemoor Avenue, said that he has been at the previous meetings. He said that he is in favor of demolishing the existing structure and rebuilding on the same footprint. He is not in favor of having a giant 3 story house with a garage underneath. He said that he is concerned that the foundation may be expanded when it is replaced. He said that there is no plan showing where the foundation will go.

The Board asked the Building Inspector how it could be assured that the foundation will be replaced on the same footprint. The Building Inspector said that the Singhs would have to submit a plot plan showing where the proposed house will be going. Once the foundation is poured, they will have to submit an as-

built plan before he will permit them to frame the house. If the foundation is not where it was shown on the plot plan, the Singhs will be forced to fix it or come back before the Zoning Board.

The Board said that it could allow the Singhs to replace the foundation on the same footprint. When the structure is set back down on the foundation, the plans submitted to the Building Inspector should show what they are going to build, what the foundation will look like, and all of the dimensions. The Board said that elevation drawings and floor plans should also be submitted.

The Board said that there is not much of the existing structure left there to lift up off of the foundation. The Board asked about the 2 by 10 framing timbers at the site. Mr. Singh said that the framing timbers are there to support the foundation, and the framing of the floor. He said that he has experience with jacking houses up and pouring new foundations.

Mr. Singh said that they will have the surveyor pin the footings prior to pouring the foundation walls.

The Board said that if they replace the foundation on the existing footprint, under the bylaw, they will not be increasing any nonconformity. The Singhs would have to come back before the Board if they plan to add a second story.

The Building Inspector said that, under the bylaw, if you have a nonconforming structure, you can put a conforming addition on without a Special Permit as long as it meets zoning requirements.

The Board read the bylaw for changes to non-conforming structures:

Application for changes to non-conforming One and Two-Family Dwellings, except changes which themselves comply with this Zoning Bylaw, shall require the Zoning Board of Appeals to identify the particular respect or respects in which the existing structure does not conform to the requirements of the present Zoning Bylaws and then determine whether the proposed alteration or addition would intensify the existing non-conformities or result in additional ones.

The Board said that this change is not complying. By allowing Mr. Singh to rebuild on the same foundation, removes the eligibility for exemption under the first clause. Mr. Singh would have to come back for a Special Permit for a second floor.

The Board asked Mr. Singh if he is planning to put a second floor on the structure. Mr. Singh said that he had spoken with the Building Inspector and told him that they intend to build a second story addition that respects all of the Zoning requirements.

Mr. Singh said that he came before the Board for a Special Permit for the foundation and the roof. They will apply for a Building Permit for a second story addition that will conform to the setbacks.

The Board said that the Special Permit will allow the Singhs to replace the foundation in the same location as the existing foundation. Mr. Singh said that there is 3 ½ feet of roof that is in the left side yard setback and a portion of the roof in the front yard setback. The Board said that the Special Permit will also allow the Singhs to correct the roof structure on the front and left sides of the house.

Mr. Krasner said that the application stated that the replacement roof would not be any higher. The Board said that the proposal is to change the pitch on the roof when it is rebuilt.

Mr. Krasner asked for clarification of the second story addition issue.

The Board said that a second story addition would be a nonconforming structure. Mr. Singh would have to come before the Board for a Special Permit for that.

Mr. Singh said that it was his understanding that it is up to the Building Inspector to decide whether or not he needs to go before the Zoning Board for a Special Permit for a second story addition.

The Board said that if the foundation of the house meets the setback requirements, they would not need a Special Permit to put a second story on.

The Board said that it would not deal with this again if the Building Inspector issues a building permit, unless a neighbor objects to the Building Inspector's decision.

Mr. Singh said that they have been trying to address the neighbors' concerns. They are proposing to put a shed roof on the house that will not be any higher.

The Board said that a condition of the Special Permit will be that the new shed roof will not be any higher than the original roof of the house.

Mr. Krasner asked about the appeals process. He said that he would call the Zoning Board office for an explanation.

Statement of Facts

The subject property is located at 33 Edgemoor Avenue, on an 8,000 square foot lot, in a district in which the minimum lot size is 10,000 square feet, and has a minimum right side yard setback of 16.4 feet, a minimum left side yard setback of 16.3 feet, and a minimum front yard setback of 21.4 feet.

The petitioner is requesting a Special Permit/Finding that removal of the existing nonconforming roof and construction of a correctly pitched roof at the same height as the existing roof, and repair/replacement of the foundation, with less than required left side and front yard setbacks, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan dated 5/18/05, stamped by Joseph R. Sullivan, Registered Professional Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, drawn by Sanjeev Singh, and photographs were submitted.

On June 7, 2005 the Planning Board reviewed the petition and stated

Although the board has no objection to granting this request a thorough review and evaluation is warranted with very specific guidelines given to the applicant in any favorable decision.

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 replacement of the existing foundation in the same location, and replacement of the roof structure on the front and left side of the house which was taken down for safety reasons, in accordance with the requirements of the Building Inspector, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, as it will neither intensify the existing nonconformance nor will it create new nonconformity.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for replacement of the existing foundation in the same location, and replacement of the roof structure on the front and left side of the house which was taken down for safety reasons, in accordance with the requirements of the Building Inspector, subject to the following condition:

1. That the new shed roof will not be any higher than the original roof of the house.

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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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

Robert A. Bastille

Robert W. Levy

cc: Planning Board
Inspector of Buildings
lrm