

**ZONING BOARD OF APPEALS**

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ZBA 2007-40
Petition of C. David and Jean Thomas
49 Glen Road

Petition of C. DAVID AND JEAN THOMAS (the "Petitioner") requesting a Variance pursuant to the provisions of Section XIX and Section XXIV-D of the Zoning Bylaw to construct a 23 foot by 28 foot art studio above with a garage below with less than required front yard setbacks, on a lot that has no frontage at 49 GLEN ROAD, in a 10,000 square foot Single Residence District.

On May 23, 2007, 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 David Thomas, who said that he has lived at 49 Glen Road for approximately two years. He said that the request is for a Variance to build a studio over a two-car garage in the setback area. He said that the setback to the street is approximately 160 feet.

Mr. Thomas said that the Wetlands Protection Committee reviewed Plans A and B (which were attached to the petition for Variance) and expressed a preference for Plan B, C2A, which would require a Zoning Variance. Mr. Thomas said that Plan A involved removal of the trees and disturbance of the embankment to build a conforming structure.

Hoi Wing, Payette Associates, said that she is a designer who has been working on this project. She said that Plan B allows for minimal impact on the site. She said that Plan A would require extensive work.

Ms. Wing said that they will work with a landscape architect to preserve the large trees that will be located close to the foundation of the proposed garage/art studio addition. Mr. Thomas said that the odd structure that connects the garage/studio to the house was designed to address the issue of preserving the trees.

The Board said that the topography of the lot is an issue. There is an elevation differential of approximately 70 feet across the lot. The Board has granted Variances for properties on that side of Glen Road over the years. The Board said that Plan B would not derogate from the intention of the bylaw.

Mr. Thomas said that he spoke with the neighbors on three sides and they support the proposed Plan B.

Statement of Facts

The subject property is located at 49 Glen Road, in a 10,000 square foot Single Residence District.

The Petitioner is requesting a Variance to construct a 23 foot by 28 foot art studio above with a two-car garage below, with 7 foot front yard setbacks on a lot that has no frontage on Glen Road.

A Plot Plan dated 5/15/07, stamped by John R. Hamel, Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 5/13/07, drawn by NVArchitecture, and photographs were submitted.

On April 9, 2007, the Wetlands Protection Committee issued an Order of Conditions and expressed its preference for Plan B, shown as "C2".

Amended Order of Conditions, DEP File No. 324-482, 49 Glen Road was submitted with attachments:

- Site Plan – Garage Addition C2, Plan A – Requires no ZBA Variance, dated 8/23/06
- Site Plan – Garage Addition C2, Plan B – Requires ZBA Variance, dated 8/23/06.

On June 4, 2007, the Planning Board reviewed the petition and was opposed to granting the request.

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 due to the hardship created by the topography of the lot, literal enforcement of the provisions of Section XIX of the Zoning Bylaw would involve a substantial hardship to the petitioners. The topography of the lot is unique and other parcels in the zoning district do not suffer from this problem. Although a conforming addition could be built, it would require removal of several mature trees and extensive hillside excavation and soil disturbance, which could potentially cause negative environmental impacts.

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 23 foot by 28 foot art studio above with a two-car garage below, with 7 foot front yard setbacks on a lot that has no frontage, in accordance with the submitted plot plan and construction drawings, subject to the following condition:

1. Amended Order of Conditions, DEP File No. 324-482, 49 Glen Road is hereby incorporated in this decision.

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.

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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

David G. Sheffield

J. Randolph Becker

cc: Planning Board
Inspector of Buildings
lrm
cc: Planning Board