

**ZONING BOARD OF APPEALS**

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ZBA 2007-72

Petition of Jason & Andrea Auerbach
43 Abbott Road

Petition of JASON AND ANDREA AUERBACH requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw for demolition of an existing nonconforming deck and construction of a 16.2 foot by 16.3 foot screened porch with less than required right side yard setbacks, in a 10,000 square foot Single Residence District, at 43 ABBOTT ROAD, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On September 24, 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 Michael Collins, who said that he was the architect representing the Auerbachs (the "Petitioner"). He said that the proposed addition is part of a larger project that is being built "by right". He said that the existing deck is 8.3 feet from the side lot line at its closest point. He said that the proposed addition will be pulled in further from the side lot line.

The Board said that a Special Permit had been granted for an addition and deck with a side yard setback of 9.3 feet in December of 1992. Mr. Collins said that the proposed addition will be set back ten inches from the existing setback.

The Board said that the setback may have been measured from the foundation. The house is set back one foot from the foundation. The 1993 Drake Survey shows a one foot setback from the November 1992 Survey. The Board said that the Plot Plan should be revised to clarify the measurements of the right side yard setbacks.

The Board asked about the grade separation between the Auerbachs and the neighbor on the right side. Mr. Collins said that the neighbor is downhill from the Auerbachs.

Mr. Collins said that the trees will not be impacted by the project.

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 43 Abbott Road, on a 10,000 square foot corner lot, with a minimum right side yard setback of 8.3 feet.

The Petitioner is requesting a Special Permit/Finding that demolition of an existing nonconforming deck and construction of a 16.2 foot by 16.3 foot screened porch with less than required right side yard setbacks shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan dated 9/14/07, stamped by Robert F. Drake, Registered Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 9/18/07, drawn by D. Michael Collins, and photographs were submitted.

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 although demolition of an existing nonconforming deck and construction of a 16.2 foot by 16.3 foot screened porch with less than required right side yard setbacks is increasing a nonconformity, such increase shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for demolition of an existing nonconforming deck and construction of a 16.2 foot by 16.3 foot screened porch with less than required right side yard setbacks, subject to the following condition:

- The as-built survey shall show the setback measurements of the foundation and exterior walls of the northwest corner of the existing 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.

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.

Cynthia S. Hibbard, Acting Chairman

David G. Sheffield

David L. Grissino

cc: Planning Board
Inspector of Buildings
lrm