

**ZONING BOARD OF APPEALS**

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RICHARD L. SEEDEL, CHAIRMAN
CYNTHIA S. HIBBARD
DAVID G. SHEFFIELDLENORE R. MAHONEY
EXECUTIVE SECRETARY
TELEPHONE
(781) 431-1019 EXT. 2208
Web: www.wellesleyma.govJ. RANDOLPH BECKER, VICE CHAIRMAN
ROBERT W. LEVY
DAVID L. GRISSINO

ZBA 2008-71
Petition of Nova Homes, Inc.
62 Overbrook Drive

Pursuant to due notice, the Special Permit Granting authority held a Public Hearing on Thursday, November 6, 2008 at 7:30 p.m. at the Town Hall, 525 Washington Street, Wellesley, on the petition of NOVA HOMES INC. requesting a Special Permit/Finding pursuant to the provisions of Section XVII, Section XIVE and Section XXV of the Zoning Bylaw that demolition of an existing nonconforming structure and construction of a 1,405 square foot dwelling and construction of an 80 square foot deck, on a 9,600 square foot lot in a district in which the minimum lot size is 10,000 square feet, at 62 OVERBROOK DRIVE, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On September 15, 2008, 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 Stanley Brooks, Esquire, who said that he was representing Nova Homes, Inc. (the "Petitioner"). He said that present with him were John and Jack Magee, who have significant experience as developers in the Andover area. He said that also present at the hearing was the neighbor at 33 Edgemoor Avenue, Eli Burstein.

Mr. Brooks said that the neighborhood is changing dramatically. He said that there are many new and larger homes. He said that the proposed home is more modest.

Mr. Brooks said that the petition was presented as a Variance or a Special Permit/Finding because the Board must determine whether the 40 foot jog is a rear lot line or a side lot line.

Mr. Brooks asked that the Board consider the 40 foot jog between 62 Overbrook and 35 Edgemoor to be the rear lot line for 62 Overbrook Drive. He asked that the petition been considered for a Special Permit for an undersized lot rather than for a Variance for an increased nonconformity.

After looking at the definition of rear yard in the Zoning Bylaw, the Board determined that the 40 foot line between 62 Overbrook Drive and 35 Edgemoor Avenue would be considered a rear lot line and that the petition would be heard for a Special Permit/Finding on an undersized lot.

Mr. Brooks said that there is a 3200 square foot orphan lot at 35 Overbrook Drive that has been in one family for many years. Nova Homes has been trying to contact the only owner that they have been able to locate, Mr. McGary, who lives in New Jersey. Mr. McGary inherited 1/7th ownership of the lot. Mr. McGary does not know who the heirs of the six other siblings who co-owned the lot are. He has been paying the taxes on the property. Mr. Brooks said that it is unlikely that 35 Edgemoor will ever be developed.

Mr. Brooks said that there is an easement that runs along the side property lines of 33 and 35 Edgemoor Avenue and 62 Overbrook Drive.

The Board asked about the retaining wall in the front setback. Jack Magee said that the purpose of the retaining wall was for aesthetics.

The Board said that no information on topography of the lot had been submitted. There was nothing to tell the Board how the structure was going to fit vertically on the site. The plot plan shows the driveway going down under to the garage. There was nothing submitted that assured the Board that the proposed height will be the actual height.

Mr. Brooks said that spot grades are shown on the plot plan. The Board said that the two foot retaining wall will change the grade.

The Board asked if the proposed house would be subject to Large House Review (LHR) if it was on a conforming lot. Mr. Brooks said that the proposed house at 2990.125 square feet would be under the threshold for Large House Review. The Board discussed the Total Living Area plus Garage Space (TLAG) calculations.

The Board said that the house is large for the lot. It would be close to the threshold for LHR. The proposed house will be four stories and will appear very tall at the back. Mr. Magee said the garage will have one story on top of it. The rest of the house will have the foundation sunk into the ground with two stories and an attic.

The Board said that it was not clear that one would not hit the retaining wall when backing out of the two car garage. Mr. Brooks said that they discussed creating a bumpout and changing the retaining walls somewhat to create a turnaround to allow cars to drive out to Edgemoor. He said that revised plans could be submitted showing that. The Board said that, in granting the Special Permit, it would need to see plans that show that the neighbors will not be affected.

The Board said that it was concerned that there be an appropriately sized house for the lot. The proposed house will be approximately twice the size of most of the other houses in the neighborhood. Jack Magee said that they compared lot coverage for houses in the neighborhood and this would not be the largest. Mr. Brooks displayed a comparison of lot coverages in the neighborhood.

The Board said that the proposed plans improve the setbacks, footprint and placement on the lot. The mass of the proposed structure is a concern.

Mr. Brooks said that the main focal point will be from Overbrook Drive. He said that it will be consistent with other houses in the neighborhood. The view from Edgemoor Avenue will be down a narrow alley way, approximately 100 feet from the street edge.

Mr. Brooks said that there have been conversations with many of the neighbors. He submitted a letter of support that was signed by nine of the neighbors who had an opportunity to look at the proposed plans. Some of the neighbors had concerns. Nova Homes is willing to make some accommodations. Construction vehicles, with the exception of the concrete trucks for the pouring of the retaining walls, will access the property from Overbrook Drive. Dust from demolition of the existing building will be minimized. They spoke with the neighbor, Mr. Burstein, about accessing his spigot once the water is shut off. They also spoke with Mr. Burstein about landscaping around the air conditioner unit and along the lot lines.

Mr. Brooks said that the applicant is willing to include drywells at the gutters, downspouts, and a french drain along the lot line at the northerly side and along the southerly side where it abuts 33 Edgemoor Avenue. He said that there is a significant berm that runs along the lot line.

Eli Burstein, 33 Edgemoor Avenue, said that he wanted to voice his support for the plans that were presented. He said that Nova Homes has been very responsive and accommodating to the neighbors. He said that they are looking forward to having a more family oriented house on the lot next door.

Debbie Garron, said that she is the realtor presenting the seller of the property. She said that she was one of the people who canvassed the neighborhood. She said that she received positive responses.

Mr. Brooks said that the site plans will be revised to show the ability to access and egress the garage without going onto the abutting property. The retaining wall will be deleted on the front of the property. The revised plans will show the proposed drywells and french drains. More information on the elevations will be provided, which may involve some revisions to the house plans. They will provide information on calculations for determination of average grade and height.

The Board said that some thought should be given to apparent and actual mass. Window treatments on the sides of the building could improve the appearance of mass. The Board asked if the dormer at the rear is absolutely necessary and if the roof pitch could be reduced.

The Board voted unanimously to continue the petition to the November 6, 2008 Public Hearing.

November 6, 2008

Presenting the case at the hearing was Stanley Brooks, who said that existing and proposed conditions plans with topographical information had been submitted to the Board. He said that the proposed conditions plan shows the conforming dwelling. A decision was made to keep stone retaining wall at the front of the house because it visually sets the house back from the street, reduces the visibility of exposed foundation and breaks up the lot.

Mr. Brooks said that the grade around the house will be raised approximately 2.5 feet. The proposed ridgeline of the house will be 33.5 feet from average grade.

Mr. Brooks said that the revised building plans addressed concerns of the Board regarding the mass and bulk of the house. The first and second floors of the house were reconfigured internally which allowed for 11 new windows to be installed to soften the look on the left and right sides. A window at the back of the house had to be removed because of the reconfiguration but was replaced with a smaller window towards the center of the proposed dwelling.

Mr. Brooks said that a driveway turnaround is shown on the site plans. The elevations were raised ½ foot at the lot line with 37 Edgemoor Avenue to address drainage issues. The builder has committed to installing a french drain along that line as a preventative measure. The french drain is not shown on the plan. Drywells will be installed to collect roof runoff.

Mr. Brooks said that, due to the reconfiguration, the TLAG changed from 2990 square feet to 3105 square feet, which is less than that of several of the houses immediately across the street. He said that the proposed dwelling will not be out of character with other dwellings that have been constructed in the neighborhood. The Board said that the large existing houses are not necessarily an appropriate benchmark.

Mr. Brooks said that the note on the proposed plot plan that states that the area of proposed dwelling outside building envelope will be 170 square feet plus deck of 50 square feet is inaccurate.

The Board said that the proposed house will appear to be a four story structure from the Edgemoor Avenue side. The height will be 35.2 feet above existing average grade. The Board said that it had previously suggested that removing the dormers, reducing the pitch and/or the height of the roof could help to diminish the appearance of a four story structure.

Mr. Brooks said that the rear of the house will be 90 feet from Edgemoor Avenue. The driveway at Edgemoor is only 40 feet wide. He said that there are a number of plantings on the orphan lot. He said that the varied architectural details and materials as well as the windows break up the view of the dwelling. He said that there is no direct abutter at the rear.

The Board asked about the purpose of the dormers. Mr. Magee said that they were planning to finish a portion of the attic. The rear dormer portion would be finished and the other side would remain unfinished.

The Board asked about the topography of the lot. Mr. Brooks said that there is a rise on the southerly side of the lot at 33 Edgemoor Avenue that is an artificially created berm. He said that it is a relatively flat lot.

The Board asked about the retaining wall. Mr. Magee said that the 103.0 foot elevation that is shown on the plot plan is the top of the wall. The elevation of 103.6 at the house line will slope down to 103.0 at the retaining wall.

The Board said that the building plans do not show the retaining wall. There are inconsistencies between the construction drawings and the plot plan. Mr. Magee said that the slope lines shown in the rear and side elevation drawings are not to scale. Mr. Brooks said that the building plans do not accurately reflect the site conditions. He said that the plot plan reflects the site conditions.

Mr. Brooks said that the applicant is willing to remove the dormer at the rear of the house. He said that engineering work will be done to enable the building plans to be consistent with the plot plan.

Mr. Brooks said that there is a 2.5 feet leeway in the height of the structure. He said that because of the 2.5 feet, the inconsistencies that appear between the plot plan and the building plans would not push the height of the structure over 36 feet. He said that it is not their intention to go up to 36 feet.

The Board said that removing the dormer would address the mass issue. It would be good to bring down the peak of the garage so that it is actually below the roofline of the house. Mr. Brooks clarified that the height of the garage roof is the roof over the family room.

James Krasner, 32 Edgemoor Avenue, said that his is one of the houses facing the back of 62 Overbrook Drive. He said that he can see across the orphan lot and will be able to see the new structure. He said that bringing the roof down a bit would be good. He said that he had submitted a letter requesting that there be no driveway on Edgemoor Avenue. He said that he was pleased to hear that the builder will keep the construction vehicles on Overbrook Drive, if possible. He said that Edgemoor Avenue is very narrow.

Statement of Facts

The subject property is located at 62 Overbrook Drive, on a 9,600 square foot lot in a district in which the minimum lot size is 10,000 square feet.

The Petitioner is requesting a Special Permit/Finding that demolition of an existing nonconforming structure and construction of a 1,405 square foot dwelling and construction of an 80 square foot deck, on a 9,600 square foot lot in a district in which the minimum lot size is 10,000 square feet shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan dated 9/10/08, revised 10/13/08, stamped by Michael D. Bovio, Professional Land Surveyor, Proposed Floor Plans & Elevation Drawings, dated 9/8/08, revised 10/22/08, drawn by Drawings Unlimited, and photographs were submitted.

September 22, 2008, the Planning Board reviewed the petition and had no objection to granting the request.

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 demolition of an existing nonconforming structure and construction of a 1,405 square foot dwelling and construction of an 80 square foot deck, on a 9,600 square foot lot in a district in which the minimum lot size is 10,000 square feet shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, as it will neither increase an existing nonconformity nor create a new nonconformity.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for demolition of an existing nonconforming structure and construction of a 1,405 square foot dwelling and construction of an 80 square foot deck, subject to the following conditions:

1. A revised plot plan and revised elevation drawings shall be submitted to present consistent information.
2. Calculations for existing and proposed average finished grade and the building height be submitted with the result that the proposed building height be no higher than 33.5 feet above proposed average grade.
3. The dormer shown on the top floor of the rear elevation shall be removed.
4. The height of the garage shall be reduced so that it will be below the bottom edge of the roof on that side.
5. Construction vehicles shall access the site from Overbrook Drive with the exception of when the driveway is constructed.
6. To the extent possible, all vehicles shall be parked on-site.

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.

J. Randolph Becker, Acting Chairman

Cynthia S. Hibbard

Robert W. Levy

cc: Planning Board
Inspector of Buildings
lrm