

**ZONING BOARD OF APPEALS**

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web: [www.wellesleyma.gov](http://www.wellesleyma.gov)J. RANDOLPH BECKER, VICE CHAIRMAN  
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ZBA 2009-41  
Petition of Kim & Peter Mitchell  
8 Pickerel Road

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Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, July 9, 2009 at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of KIM & PETER MITCHELL requesting a Variance pursuant to the provisions of Section XIX and Section XXIV-D of the Zoning Bylaw to construct a 22 foot by 24 foot by 26 foot two-story addition with less than required front yard and left side yard setbacks, on a 6,300 square foot lot in a district in which the minimum lot size is 10,000 square feet, at 8 PICKEREL ROAD. The proposed lot coverage will be 26%.

On June 22, 2009 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 Gary Vinciguerra, GEV Design, who said that he was representing Kim and Peter Mitchell (the "Petitioner").

Mr. Vinciguerra said that the house has been in the family since 1915. He said that the existing house is a one-bedroom home located on a nonconforming lot. He said that the proposal is to construct a two-story addition. He said that the lower level will be a garage that will cover what is currently the driveway and the second level will be for a bedroom.

Mr. Mitchell said that they need an extra bedroom for his father-in-law who is 75 years old. He said that it would be difficult for all of them to live in a one-bedroom house.

Mr. Vinciguerra said that the Petitioner is asking for relief for side yard and front yard setbacks. He said that the existing setback from Pickerel Road is 13.2 feet and the front yard setback for the proposed addition will be 16.4 feet. He said that the left side yard setback will be 14 feet.

The Board said that the shed could not be used as the eastern boundary for the existing nonconformity. The Board said that reducing the width of the proposed addition by six feet would bring the side setbacks into conformity, which would change the petition to a Special Permit.

The Board asked if there were permits for the existing deck and addition. The Board said that the existing deck and the addition cannot be used as reference points for a Special Permit if there were no Building Permits for them.

The Board asked if the landscape timbers and brick patio are below the lot line. Ms. Mitchell said that it has always been their understanding that the lot line has been down to the water. The Board said that the surveyor called the heavy line on the plan as the lot line.

The Board said that the stairs that come down between the area of the new deck and the existing deck are not shown on the plan.

The Board said that it appears that the existing deck encroaches into the area beyond the heavy line on the plot plan.

The Board said that the shed will be relocated. The Board asked about the dimensions of the shed. Mr. Vinciguerra said that it will be 10 feet by 12 feet. The Board said that moving the shed to 11.7 feet from the western property boundary would create a Variance condition. Mr. Vinciguerra said that could be modified.

Deadra Doku-Gardner, 3 Pickerel Road, said that she has known the father-in-law who has lived there for many years. She said that it is a very small house. She said that it would be impossible for all of them to live there. She said that it would be beneficial to the neighborhood if the house was improved.

The Board said that the Petitioner should look at the title to try to determine the property boundaries. The Board said that the proposed addition should not come any closer to the rear property line than the closest legal structure.

The Board voted unanimously to continue the petition to August 6, 2009.

#### August 6, 2009

Presenting the case at the hearing was Gary Vinciguerra. Also present were Peter and Kim Mitchell.

Mr. Vinciguerra said that the initial request was for a Variance. He said that the plans have been revised. He said that the size of the proposed addition was reduced to meet the side yard setback requirements. He said that the Petitioner is now requesting a Special Permit for the addition.

Mr. Vinciguerra said that the existing deck will be removed. The Board said that the new deck will be constructed within one foot of the rear property line. The Board said that it must determine if the existing deck is legal construction to be used for setback purposes. The Board said that if there is no record of a permit for the deck, there will have to be 10 feet between the proposed deck and the rear property line or a Variance will be required.

The Board asked how long the deck has been there. Mr. Vinciguerra said that it was built after 1976 and prior to 2008. He asked if it would be possible for the Board to approve the petition without the deck portion.

Mr. Vinciguerra said that an attorney has determined that the land beyond the solid line on the plot plan that goes down to the water is not owned by the Town or anyone else currently. He said that the attorney is looking into how to proceed forward.

The Board asked if there were any windows in the end wall where the proposed shed will go. Mr. Vinciguerra said that the house will be raised three feet. He said that the window on the side elevation will be above the shed.

The Board said that the 1975-76 plan shows a lot size of 4,850 square feet. Mr. Vinciguerra said that the area is 6,300 square feet. The Board said that the confusion could be that there were two lots, 786 and 787, on the 1975-76 plan.

The Board asked how long the current owners have lived in the house. Ms. Mitchell said that they have lived there for a year.

The Board voted unanimously to allow the petition for the deck to be withdrawn without prejudice.

The Board said that if the existing deck has been there for ten years or more, it does not have to be removed.

#### Statement of Facts

The subject property is located at 8 Pickerel Road, on a 6,300 square foot lot in a district in which the minimum lot size is 10,000 square feet, with a minimum front yard setback of 13.2 feet and less than required rear yard setback.

The Petitioner is requesting a Special Permit/Finding that construction of a 16 foot by 24 foot two-story addition with less than required front yard setbacks and construction of a 5 foot by 8 foot shed, on a 6,300 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 5/18/09, revised 7/21/09, stamped by Paul J. Donohoe, Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 5/19/09, revised 7/28/09, prepared by GEV Design, Inc., and photographs were submitted.

On May 19, 2009, the Wetlands Protection Committee issued an Order of Conditions, MassDEP #324-617 – 8 Pickerel Road.

#### 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 construction of a 16 foot by 24 foot two-story addition with less than required front yard setbacks and construction of a 5 foot by 8 foot shed 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 construction of a 16 foot by 24 foot two-story addition and construction of a 5 foot by 8 foot shed, in accordance with the submitted plot and construction drawings.

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.

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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Robert W. Levy

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David L. Grissino

cc: Planning Board  
Inspector of Buildings  
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