

**ZONING BOARD OF APPEALS**

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ZBA 2009-52

Petition of Elissa Landre & William Giezentanner
93 Russell Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, August 6, 2009 at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of ELISSA LANDRE & WILLIAM GIEZENTANNER requesting a Variance pursuant to the provisions of Section XIX and Section XXIV-D of the Zoning Bylaw for demolition of an existing 704 square foot nonconforming structure with less than required left and right side yard setbacks, and construction of a new 1,276 square foot structure with less than required left and right side yard setbacks and an average height of 37.5 feet, on a 5,407 square foot lot in a district in which the minimum lot size is 10,000 square feet, at 93 RUSSELL ROAD.

On July 20, 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 were William Giezentanner and Elissa Landre (the "Petitioner"). Mr. Giezentanner said that they purchased the home at 93 Russell Road in March of 2008.

Mr. Giezentanner said that the site is unique and challenging. He said that the lot was subdivided in 1915. He said that it is 37.5 feet wide. He said that there is a drop of 47 feet from Russell Road to Morses Pond over 132 feet, for a slope of 35%. He said that the steep slope is the major reason for requesting relief with a Variance.

Mr. Giezentanner said that the existing house is a 22 foot by 32 foot seasonal house. He said that it has been marginally winterized. He said that the house is 45 feet from the front property line.

Mr. Giezentanner said that the project was reviewed by the Wetlands Protection Committee (WPC).

Mr. Giezentanner said that all of the plumbing burst the winter before they bought the house. He said that the house was built without a foundation. He said that the house was built on columns.

Mr. Giezentanner said that the existing building is not square, as shown on the topographical map. He said that there are side stairs and a landing that encroach onto the neighbor's property at 95 Russell Road.

Mr. Giezentanner said that the proposal is to demolish the existing structure and construct a 22 foot by 58 foot three story residence that will fit the character of the neighborhood. He said that they are proposing to remove three railroad tie retaining walls. He said that much of the design is dictated by the site.

Mr. Giezentanner said that the plan is to build a LEED certified house that will be as close to zero-based petroleum energy use as possible. He said that the roof is configured to optimize solar energy. He said that the steep south-facing part of the roof is for solar hot water collection in the winter. He said that the more shallow roof is for photovoltaic electrical panels in the summer.

Mr. Giezentanner said that they used the existing side yard setback as a guideline. He said that the right side yard setback will be 4 feet at the front of the house. There will be a 30 foot setback from the street. The rear yard setback will be conforming. He said that the left side yard setback will be 9.5 feet.

Mr. Giezentanner said that the Board granted approval of a 22 foot by 54 foot residence in 1977 (ZBA 77-15) with a minimum north side setback of 3.6 feet and a minimum south side setback of 6.59 feet.

Mr. Giezentanner said that there is a unique circumstance with the site's topography. He said that it is a narrow, steep slope. He said that because of the steep slope and their proposal for solar energy, the height of structure will be 37.975 feet.

Mr. Giezentanner said that they spoke with the neighbors, who have been supportive of the plans. He said that some of the neighbors have sent letters.

Mr. Giezentanner said that this is a unique situation and it would not substantially affect the intent or purpose of the Zoning Bylaw.

The Board said that it is a unique lot. The Board said that it is a creative solution to a range of problems. Various materials will be used and the design itself alleviates massing concerns.

The Board said that the request is for a Special Permit and a Variance. The Board said that there has to be a substantial hardship due to the topography of this lot and that the topography issue has to affect this site and not the Zoning District in which it is located.

The Board asked if the Petitioner had looked at other ways of bringing the height down on the structure. The Board said that the peak of the house will be very noticeable from the pond.

The Board said that it is a very steep lot and for every foot back, the height problem becomes worse. The Board asked if the Petitioner balanced the request for a front yard Variance versus a height Variance.

Mr. Giezentanner said that he searched the word "height" in the Zoning Bylaw. He said that it was referred to as 40 feet several times, except twice. He said that there is a paragraph in the bylaw that threw him off because of the wording. He said that he did not realize that he needed a Variance until he brought the plans to the Zoning office.

The Board said that the hardship that was described in the brief was that if the solar and LEED aspects are not allowed by the height Variance, the operating costs will go up. The Board said that solar panels cost more on the capital side.

Mr. Giezentanner said that he asked his architect about lowering the height. He said that everything that they talked about would lower the solar efficiency. He said that, after speaking with the architect, he realized that the issue was topography. The Board said that the height of the structure is dependent on the solar panels and their orientation, as well as the location of the structure on the lot.

Mr. Giezentanner said that they had looked at other options for the attaining the compliant average height. He said that they could fill the area under the gazebo to raise the average grade. He said that it would be expensive because it would require a retaining wall underneath the gazebo.

The Board said that there are many houses that are closer than 30 feet from the road on Russell Road and around Morses Pond. The Board said that if the house was pushed forward, the height problem could be alleviated.

Mr. Giezentanner asked if the petition could be continued so that the architect could explore how far the house would have to be moved into the front setback to make the average height compliant. The Board said that the architect should also look to see if there is any way to preserve the 30 foot front yard setback.

The Board said that having less than the 30 foot setback relates better to the Zoning Bylaw and Massachusetts General Law because pushing the house back would create the hardship.

The Board asked why the solar panels were set so high. Mr. Giezentanner said that there are trees to the south on the neighbor's property. The Board said that it would encourage the Petitioner to not have the solar panels project over the roof line.

The Board voted unanimously to continue the petition to September 10, 2009.

September 10, 2009

Presenting the case at the hearing were Elissa Landre and William Giezentanner. Mr. Giezentanner said that in August they presented a request for a 23 inch height Variance because of their desire to build a solar building with a specific roof configuration. He said that the circumstances of the site drove the average height up beyond the 36 foot maximum.

Mr. Giezentanner said that after listening to their description, the Board suggested that a reduced front yard setback might result in eliminating the need for a height Variance and would be more in keeping with the character of the neighborhood because few residences have a 30 foot front yard setback.

Mr. Giezentanner said that the site is small at 5,400 square feet. He said that it is very narrow at 37.5 feet wide and has a steep 35% slope from Russell Road to Morses Pond for a drop of 47 feet over 132 feet.

Mr. Giezentanner said that the topographic circumstances were the major cause for requesting a Variance.

Mr. Giezentanner said that the design is unchanged from the August proposal except for the reduced front yard setback. He said that there will be less than 25% lot coverage. The proposed structure will use the existing side yard setbacks. The structure will be approximately 51 feet from the pond. The front yard setback will be reduced from 30 feet to 24 feet.

Mr. Giezentanner said that they were issued an Order of Conditions from the WPC in August. He said that he spoke with the Conservation Administrator, who considered moving the house forward to be a minor change that would not require any re-submission before the Committee.

Mr. Giezentanner said that the proposed structure will meet the 36 foot height requirement. He said that they are now requesting a Variance for the front yard setback. He said that the hardship is that this is a very difficult topographic situation. He said that it is a unique circumstance because of the site size and topography, as well as a narrow and steep slope. He said this situation is not likely to occur in very many other locations. He said that they believe that there would be no substantial detriment to the public good and that relief for their unique situation would not substantially affect the intent or purpose of the Zoning Bylaw.

The Board said that there are challenges with this lot and the proposed structure is a good solution with respect to the mass, bulk and organization.

The Board said that a Special Permit would be granted to build along the same side yard setbacks as the existing structure.

The Board said that the conditions for granting a Variance for shape and topography could be met, given the steep and narrow lot. The Board said that the shape and topography especially affects this lot but does not affect the district in general and that the hardship is not self-imposed. The Board said that the relief may be granted without substantial detriment to the public good and without nullifying or derogating from the intent of the bylaw.

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 93 Russell Road, on a 5,407 square foot lot in a district in which the minimum lot size is 10,000 square feet, with a minimum left side yard setback of 10.5 feet and a minimum right side yard setback of 4 feet.

The Petitioner is requesting a Special Permit/Finding that construction of a 1,276 square foot structure with less than required left and right side yard setbacks shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

The Petitioner is requesting a Variance for construction of a 1,276 square foot structure with less than required front yard setbacks.

A Plot Plan dated 7/10/09, revised 8/24/09, stamped by Dana J. Standley, Professional Land Surveyor, Topographical Plan of Land, dated 8/8/08, prepared by Dana J. Standley, revised 6/17/09, Proposed Floor Plans, dated 5/7/09, revised 8/19/09 and Elevation Drawings, dated 5/8/09, revised 7/30/09 and 8/19/09, prepared by Ives Architects, and photographs were submitted.

On July 20, 2009, the Wetlands Protection Committee issued an Order of Conditions, MassDEP #324-623 – 93 Russell Road, Wellesley.

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 1,276 square foot structure with less than required left and 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 construction of a 1,276 square foot structure with less than required left and right side yard setbacks, in accordance with the submitted revised plot plan and construction drawings.

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.

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 1,276 square foot structure with less than required front yard setbacks, in accordance with the submitted revised plot plan 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.

If construction has not commenced, except for good cause, this Variance shall expire one year 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.

J. Randolph Becker, Acting Chairman

Robert W. Levy

David L. Grissino

cc: Planning Board
Inspector of Buildings
lrm