

**ZONING BOARD OF APPEALS**

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ZBA 2010-18  
Petition of CMD LLC  
50 Kirkland Circle

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Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, March 4, 2010, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of CMD LLC requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that construction of a 19.31 foot by 20 foot two-story addition, construction of a 5 foot by 7.66 foot deck, and construction of a 7.33 foot by 9.46 foot two-story addition that will meet all setback requirements, and construction of a 13.92 foot by 24.9 foot second story addition with less than required left side yard setbacks, in a 10,000 square foot Single Residence District, at 50 KIRKLAND CIRCLE, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On February 16, 2010 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 Laurence Shind, Esq., representing CMD LLC (the "Petitioner") and Bill Foley, contractor. Mr. Shind said that the proposed project will comply with all front and rear yard setback requirements. He said that it will not increase the existing left side yard nonconformity and will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Mr. Shind said that the lot contains 10,000 square feet. He said that the house was built in 1938 and contains approximately 2,000 square feet of living space on the first and second floors. He said that existing lot coverage is just over 16 percent. He said that there is a two-car attached garage at the front of the house and a walkout basement at the rear.

Mr. Shind said that the proposed expansion and renovation will bring the living space total to 2,600 square feet and the lot coverage to 21 percent.

Mr. Shind said that the total calculated living area under Large House Review (LHR) will be 3,580 square feet, which is below the 3,600 square foot threshold for the district.

Mr. Shind said that the applicant spoke with the neighbors about the proposed plans.

The Board said that there had been initial concern about the second story over the existing garage. The Board said that the topography works favorably for the applicant.

The Board said that plans for the front elevation and the side elevation do not match. The Board said that Plan 07 has the appearance that the addition does not extend all of the way. The Board said that the plans should be reconciled.

The Board said that it frequently suggests to petitioners that additions be pulled in one foot. The Board said that it did not appear that pulling the addition in one foot would limit any functional use of bedroom 4. The Board said that, by making that change, it would be more comfortable with the bulk on the side of the house. Mr. Foley said that he was concerned about the rooflines on drawing 07. He said that it is a 15 foot room but the back has a sloping ceiling. He said that he would prefer to not bring the addition in because of space needs. He said that he would do it if the Board feels strongly about it.

The Board said that the garage is only 11 feet from the side lot line. The Board said that the neighbor's house is at a higher grade.

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 50 Kirkland Circle, in a 10,000 square foot Single Residence District, with a minimum left side yard setback of 10.8 feet and a minimum right side yard setback of 18 feet.

The Petitioner is requesting a Special Permit/Finding that construction of a 19.31 foot by 20 foot two-story addition, construction of a 5 foot by 7.66 foot deck, and construction of a 7.33 foot by 9.46 foot two-story addition that will meet all setback requirements, and construction of a 13.92 foot by 24.9 foot second story addition with less than required left side yard setbacks, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan dated 2/3/10, stamped by Verne T. Porter, Jr., Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 2/1/10, revised 2/5/10, prepared by CMD LLC, and photographs were submitted.

On February 22, 2010, the Planning Board Staff reviewed the petition and recommended that the petition be approved with conditions.

#### 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 construction of a 19.31 foot by 20 foot two-story addition, construction of a 5 foot by 7.66 foot deck, and construction of a 7.33 foot by 9.46 foot two-story addition that will meet all setback requirements shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, as it shall neither increase an existing nonconformity nor create a new nonconformity.

It is the finding of this Authority that although construction of a 13.92 foot by 24.9 foot second story addition with less than required left 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 for construction of a 19.31 foot by 20 foot two-story addition, construction of a 5 foot by 7.66 foot deck, and construction of a 7.33 foot by 9.46 foot two-story addition that will meet all setback requirements, and construction of a 13.92 foot by 24.9 foot second story addition with less than required left side yard setbacks, subject to the following condition:

- Bedroom 4 that is shown on Plan 02 shall be moved in one foot from the existing first floor left side plane.

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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Richard L. Seegel, Chairman

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Cynthia S. Hibbard

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David L. Grissino

cc: Planning Board  
Inspector of Buildings  
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