

**ZONING BOARD OF APPEALS**

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ZBA 2012-05

Petition of Christine Norcross

19 Jackson Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, January 5, 2012, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of CHRISTINE NORCROSS requesting a Special Permit/Finding pursuant to the provisions of Section XIVE, Section XVII and Section XXV of the Zoning Bylaw that enclosure of an existing nonconforming carport that is attached to an existing nonconforming garage with less than required rear yard and right side yard setbacks, at 19 JACKSON ROAD, in a 15,000 square foot Single Residence District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On December 19, 2011, 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 Christine Norcross (the "Petitioner"), who said that there is a pre-existing nonconforming carport. She said that the plan is to add a wall and a garage door.

The Board asked if the garage was a pre-existing nonconforming garage or a garage that was allowed by a Variance. The Board said that the addition to the garage was allowed by Variance. The Board said that it may not necessarily entitle the garage to be qualified as a pre-existing nonconforming use, as it did not pre-date Zoning.

The Board explained the requirements for a Special Permit/Finding versus a Variance. The Board questioned whether the Variance is a one-time event that can be modified with a Special Permit or whether the modification of the Variance would require an amendment.

The Board said that it is a nonconforming structure. The Board said that the term, "pre-existing," nonconforming relates to pre-existing enactment of the bylaw. The Board said that the garage is not pre-existing nonconforming. The Board said that it was a prohibited use in 1990 and the previous Board found sufficient facts to issue a Variance.

The Board said that the 1990 decision describes the then-existing garage as a, "pre-existing nonconforming garage with less than the required rear and right side yard setbacks."

The Board said that one of the justifications in the 1990 decision was the shape of the lot and the location on the lot.

Ms. Norcross said that the garage was built in 1975. She said that the house was built in 1948 and the garage was attached at that time. She said that the garage space was converted to a family room and a two-car garage was added at the back of the lot.

The Board said that although the project is located in a Water Supply Protection District, there is no proposed change in footprint.

Deb Vanderveen said that she is a co-owner of 19 Jackson Road. She said that the existing carport is very unattractive. She said that they wanted to make the carport more useful and attractive.

The Board said that the issue before it concerns the Board's authority to grant a Special Permit versus an amendment to the Variance. The Board said that the standards for a Variance in 1990 were less stringent.

Ms. Norcross said that she did not know why Mr. Farnsworth did not ask for a three-car garage in 1990 since his intent was to park a car there.

Ms. Vanderveen said that there is a problem with the topography of the lot. She said that dirt runs down the hill into the carport space, which she then has to shovel off of the concrete. She said that there is a pile of mud at the back of the carport.

The Board said that an application for a Special Permit/Finding was submitted. The Board said that a Variance is not granted pre-existing nonconforming status, which is what is needed for the Board to grant a Special Permit.

The Board said that it would ask that the Petitioner allow the petition to be continued so that it can consult with Town Counsel as to the Board's legal rights in treating the Petition as a Special Permit versus a Variance.

The Board said that on one of the photographs that was submitted, there appear to be temporary partitions. Ms. Norcross said that the partition would fit in the opening but they do not put it up.

The Board said that putting up a partial height wall might resolve the runoff problem and would not constitute enclosure of the carport.

The Board said that it would look to see if there were any minutes from the 1990 meeting that would help them to understand what that Board was thinking when it granted the Variance. The Board said that it would look at Building Department records.

February 2, 2012

Presenting the case at the hearing was Deborah Vanderveen, who said that the request is to enclose a carport that was originally approved as a Variance.

The Board said that it was unable to locate minutes for the meeting concerning the Variance that was granted in 1990. The Board said that it had the 1990 Variance decision and the Building Permits.

Ms. Vanderveen questioned why the decision was granted as a Variance. The Board said that the proposed construction may not have met the criteria for a Special Permit.

Ms. Vanderveen said that the structure that was being added to in 1990 did not meet the setback requirements. She said that the proposed construction matched the pre-existing nonconforming setback.

The Board said that the current request is to enclose the carport.

The Board said that it received a response from Town Counsel in which he stated that, in his opinion, the request was for an amendment to a Variance. The Board read a portion of Town Counsel's letter.

The Board said that the Variance had been granted and no appeals were filed.

The Board said that the original Variance had a partial enclosure, so it was clear that the Board at that time accepted the concept of enclosure as part of the Variance.

The Board discussed adopting the previous Board's original reasons for granting the Variance, noting that there have been no changes in the conditions on which the original Variance was based.

The Board said that the Boards throughout the 1960's up to the 1990's would commonly write their decisions as Variances with Variance language as opposed to Special Permit language.

The Board read a portion of the 1990 Decision that stated, "It is the opinion of this Authority that the proposed one-story garage addition conforms to the present lines of the garage and does not alter the relationship of the garage to the rear lot line."

Ms. Vanderveen said that her interpretation was that the issue was the rear lot line, not the nature of the added garage component. The Board said that the side lot line was also an issue.

Ms. Vanderveen said that the current proposal is to enclose the front of the garage. She said that the rear of the garage is already in place and will not be altered.

The Board said that it could look at the request as an amendment to the Variance without looking at the underlying supporting factors for the Variance itself but rather just look at the proposed enclosure of the existing structure.

The Board said that the garage is a legal structure. The Board said that since there has been no change to the shape of the lot or to the location of the garage on the lot, the same conditions apply today as they did when the decision was made in 1990.

The Board said that the request was advertised as a Special Permit. The Board asked the Applicants if they would like to request that the Application be amended to request an amendment to the Variance so that the Board could act on it.

Ms. Vanderveen requested that the Board approve the amendment to the application to request an amendment to the existing Variance. The Board voted unanimously to approve amendment of the application as a request for an amendment to the existing Variance.

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 19 Jackson Road, in a 15,000 square foot Single Residence District in a Water Supply Protection District, with a minimum right side yard setback of 6.2 feet and a minimum rear yard setback of 6.8 feet.

The Petitioner is requesting an amendment to a Variance for enclosure of an existing nonconforming carport that is attached to an existing nonconforming garage with less than required rear yard and right side yard setbacks.

A Plot Plan dated 11/2/11, stamped by Bradley J. Simonelli, Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 12/6/11, prepared by StudioTwentySix, and photographs were submitted.

On January 30, 2012, the Planning Board reviewed the petition and was of the opinion that the petition was for an amendment to an existing Variance.

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 opinion of this Authority that desirable relief may be granted by amendment of the Variance that was granted in 1990 (ZBA 90-84) without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw. The Board adopts the findings of the Board that approved the Variance in 1990.

Therefore, the requested amendment of the Variance that was granted in 1990 (ZBA 90-84) is granted to allow enclosure of an existing nonconforming carport that is attached to an existing nonconforming garage with less than required rear yard and right side yard setbacks, subject to the following conditions:

1. The footprint of the garage shall not be expanded.
2. There shall be no plumbing in the garage.

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 amendment to the 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 G. Sheffield

cc: Planning Board
Inspector of Buildings
lrm