



ZONING BOARD OF APPEALS

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ZBA 2013-83
 Petition of Katya & Ted Daniel
 1 Durant Road

2013 DEC 19 P 12:10
 TOWN ENGINEER'S OFFICE
 WELLESLEY MA 02482

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, November 7, 2013, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of KATYA & TED DANIEL requesting a Special Permit/Finding pursuant to the provisions of Section XIVE, Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing nonconforming dwelling and garage and construction of a new two-story structure with basement and attic with less than required front yard and side yard setbacks, on a 7,193 square foot corner lot in a Water Supply Protection District in which the minimum lot size is 10,000 square feet, at 1 DURANT ROAD, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On October 21, 2013, 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 Michael Hally, Architect. Also present at the hearing were Katya and Ted Daniel, (the "Petitioner").

Mr. Hally said that the request is for a Special Permit to rebuild a house that was destroyed by fire on August 16, 2013. He said that after the fire he met with Michael Grant, Building Inspector, and discussed the nonconforming lot and nonconforming home. He said that Mr. Grant told him to treat this as if the existing house was still there.

Mr. Hally said that it is a corner lot with two front yard setbacks and two side yard setbacks. He said that they are asking for relief for two front yard setbacks and one side yard setback.

Mr. Hally said that the property is located at the corner of Durant and Claflin Roads. He said that Claflin Road is a dead end at the Daniel's lot line.

Mr. Hally said that on the plot plan the existing setbacks are labeled as "setbacks." He said that the proposed setbacks are located near them. He said that the existing front yard setback on Claflin Road will be pushed back a half foot from 18.4 feet to 19 feet. He said that the 4 foot by 6 foot covered landing that is set back 14.2 feet from Claflin Road will be removed.

Mr. Hally said that existing front yard setback from Durant Road of 19.4 feet will be pushed back three feet.

Mr. Hally said that there will be a side yard setback of 20 feet along the left side of the house. He said that on the other side there is a one-car detached garage with an 8 foot side yard setback. He said that the garage was damaged but not destroyed in the fire. He said that the plan is to give up the rights to the garage footprint. He said that they would like to remove the garage and start the new house at 15.5 feet from the side lot line. He said that the new house will have a modestly sized two-car garage included in the structure.

Mr. Hally said that they worked hard to maintain the setbacks of the previous house. The Board said that the new house has an attached garage, which means that it would need to meet the setbacks of a primary dwelling as opposed to setbacks for an accessory garage.

Mr. Hally said that they are treating this as if they are renovating the existing house. The Board said that it is not a renovation of the existing house. The Board said that, assuming that this is a disaster rebuild, the statute requires that the house be put back on the same footprint. The Board said that the petition before it would require a Variance and the Board was not convinced that the lot meets the legal criteria for a Variance.

The Board said that another issue is the size and mass of the proposed house for that neighborhood. The Board said that the house at 9 Claflin Road will be towered over. The Board said that the house next door to 1 Durant Road is also very small. The Board said that the house across the street is a size that would be permissible on this lot. Mr. Hally said that he had photographs of that house and felt that the proposed house is of comparable scale. He said that they worked hard to maintain the flavor of the existing home. He said that the hip roof will help to reduce the mass.

Mr. Hally said that there is a large house located behind this. The Board said that house is located on Parker Road. Mr. Hally said that the new home on Durant Road is of comparable size and mass. The Board said that it is a different size lot.

The Board said that the proposal is to go from an average total living area in that neighborhood to almost tying for the largest in the area. Mr. Hally said that the Total Living Area plus Garage (TLAG) for the new house will be almost 800 square feet below the threshold for Large House Review (LHR). He said that the house will be well below the height limit. The Board said that the proposal is for a 56 foot long house across from 9 Claflin Road.

Mr. Hally said that the Daniels are long standing residents in the neighborhood. He said that they met with the neighbors and everyone has seen the plans. He said that the neighbors signed a petition encouraging the Board to support the proposal.

Mr. Hally said that they were thinking in terms of the Daniels starting over. He said that the house burned and the hydrant was not operating. He said that now that the house is gone, there is a financial hardship. The Board said that financial hardship is part of the consideration for a Variance but there are three other conjunctive criteria. The Board said that it could not find any of those other three criteria when looking at this lot. The Board said that it does not have the flexibility to say that this is a special case. The Board said that it has to follow the State law. The Board said that this lot is flat, rectangular and has normal soil conditions.

Mr. Hally said that there are other homes on this street of comparable size. The Board said that one of the members did a study of the town records that indicate that this house will be 75 percent larger than the average house on Durant and Claflin Roads. The Board said that the proposal is to go from a total living area of 1,686 square feet to 2,847 square feet. The Board said that is approximately a 70 percent increase.

The Board said that the proposal is to go from 18.7 percent lot coverage to 24.1 percent lot coverage on a lot that is less than 7,200 square feet. The Board said that would be too much house squeezed in there. Mr. Hally said that the maximum lot coverage for that size lot is 25 percent.

The Board said that it is an unfortunate situation in that this is a corner lot with two front yard setbacks and two side yard setbacks.

Mr. Daniel said that he had called about a fire hydrant a month earlier than the fire. He was told that it was fixed. He said that when they tried to tap it for the fire, it did not work. He said that the family sat and watched their house burn down.

Mr. Daniel said that the house behind them is 4,000 square feet. He said that the house in front is 4,000 square feet. Ms. Daniel said that the house next to them is 3,000 square feet. Mr. Daniel questioned the Board's reasoning that the proposed house may not be in concert with what is around them. He said that the houses around them will still be larger than the house that is proposed. He said that the neighbor that Board had concerns with was the first one to sign the letter of support.

Mr. Daniel said that they spoke with all of the neighbors and none of them had any problem with the plans. He said that it will be located at two dead ends. Ms. Daniel said that they did their best to keep the setbacks as reasonable as possible. She said that they pushed the house and the garage back from the lot lines. She said that it is a dead end street and there is not a lot of traffic.

Mr. Daniel said that the house was put on hold by insurance when their investigation was underway. He said that he has a certain amount of time before he runs out of money. He said that he was worried because all of the estimates that have come in cost \$80,000 more than they are allowed.

Ms. Daniel said that winter coming and it will cost more to break ground. She said that they are facing financial pressures.

Mr. Daniel said that they have two young children and all of their best friends are in the neighborhood.

The Board said that its concern is that the house is two stories and will be built too far back on the lot.

The Board said that there is no basis in Section XVII to authorize the Board to grant relief for what the Petitioner is asking for. The Board said that the existing house complied on the north side. The Board said that the house must be moved to 20 feet from the rear lot line. The Board said that it could grant relief for everything else that is proposed.

The Board said that the Petitioner's claim is that the 15.5 foot setback for the new house is better than the 8 foot setback for the existing garage. The Board said that the garage is an accessory structure, not a single or two-family dwelling.

The Board said that there are ways to step down the massing on the Claflin Road side of the house, which is the area of concern.

The Board voted unanimously to continue the petition to December 5, 2013.

December 5, 2013

Presenting the case at the hearing were Michael Hally, Architect, and Ted and Katya Daniel (the "Petitioner").

Mr. Hally said that the Board had two issues with the previous proposal. He said that the Board could not grant a Variance but could only grant a Special Permit. He said that they needed to move one of the side setbacks to 20 feet. He said that the other concern was that there was too much mass for the proposed house.

Mr. Daniel said that this is not something that was ever planned. He said that he and his wife have lived in town for eight years. He said that they have two small children. He said that they love the town and their street. He said that the Board had concerns about the neighbors at the previous hearing. He said that they had submitted a letter of support that was signed by the neighbors. He said that they brought several abutters and neighbors to this hearing. He said that they worked hard with Mr. Hally to work under the guidelines and meet requirements.

Mr. Hally said that 1 Durant is a corner lot with two front yard and two side yard setbacks. He said that on the north side they will meet the 20 foot side yard setback. He said that the plan is to hold the other setback on Durant. He said that the existing house has front setback of 19.1 feet on Durant Road. He said that the plan is to push that back to 19.4 feet. He said that on the Claflin Road side the 18.4 foot setback will be pushed back to 19 feet. He said that the house has been demolished but the garage is still standing. He said that if the Board approves the proposed plans, the garage will be demolished as well. He said that the garage was damaged by the fire but not destroyed.

Mr. Hally said that on revised Plan A1 they shrunk the garage. He said that it will now be a one car garage with a small storage space and a second story on top of it. He said that they will be staying with a center entrance colonial with a hip roof facing Durant Road. He said that on the Claflin Road side they reduced the width of the garage to get a 20 foot setback.

Mr. Hally said that the Board had comments about the mass at the previous hearing. He said that they submitted plan, CMP-1, that shows the proposed house in November versus the current proposal. He said that there were a lot of subtle things that they did to get the mass down. He said that they reduced the height by 30 inches, changed to a more shallow roof pitch, and changed the internal framing. He said that they lost two feet on the Claflin Road side with the reduction of the garage. He said that they also eliminated some bump out of bay windows at the front. He said that the subtle changes make the appearance a lot less massive and more fitting for the neighborhood.

Mr. Hally said that plan CMP 2 compares the proposed house with similar houses on the street with approximately similar lot size and living space. He said that the house at 14 Durant Road is much higher and more massive than the proposed house. He said that 5 Durant Road has approximately the same size lot and almost the same size in square feet. He said that the Board approved additions to that house in 2008.

The Board said that the revised plans reflect all the changes that it had asked for.

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 1 Durant Road, on a 7,193 square foot lot in a Water Supply Protection District in which the minimum lot size is 10,000 square feet, with a minimum front yard setback of 19.4 feet to Durant Road, a minimum front yard setback of 18.4 feet to Claflin Road, a minimum side yard setback of 19.8 feet, and a minimum side yard setback of 8 feet.

The Petitioner is requesting a Special Permit/Finding pursuant to the provisions of Section XIVE, Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing nonconforming dwelling and garage and construction of a new two-story structure with basement and attic with less than required front yard setbacks, on a 7,193 square foot corner lot in a Water Supply Protection 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 10/15/13, revised 11/22/13, stamped by Bruce Bradford, Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 10/14/13, revised 11/23/13, and Comparison Plans, dated 11/23/13, prepared by Michael Hally Designs, Inc., and photographs were submitted.

On October 31, 2013, the Planning Board reviewed the petition and recommended that the petition be denied.

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 demolition of an existing nonconforming dwelling and garage and construction of a new two-story structure with basement and attic with less than required front yard setbacks, on a 7,193 square foot corner lot in a Water Supply Protection 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 shall neither increase existing nonconformities nor create a new nonconformity.

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PLANNING BOARD'S OFFICE
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Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for demolition of an existing nonconforming dwelling and garage and construction of a new two-story structure with basement and attic with less than required front yard setbacks, on a 7,193 square foot corner lot in a Water Supply Protection District in which the minimum lot size is 10,000 square feet, in accordance with:

- Plot Plan, dated 11/22/13
- Floor Plans and Elevation Drawings, dated 11/23/13

The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed constructions 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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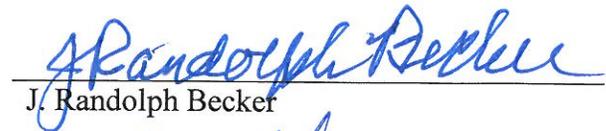
ZBA 2013-83
Petition of Katya & Ted Daniel
1 Durant Road

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TOWN CLERK'S OFFICE
MILLSLEY MA 02482

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.



Richard L. Seegel, Chairman



J. Randolph Becker



Walter B. Adams

cc: Planning Board
Inspector of Buildings
lrm

