



ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

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ZBA 2014-68

Petition of Cyndi Koss & Antoine Nakhle
45 Elmwood Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, August 7, 2014, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of CYNDI KOSS & ANTOINE NAKHLE requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that construction of two two-story additions, a screened porch, and three stair landings that will meet all setback requirements, on an 8,690 square foot corner lot in a Single Residence District in which the minimum lot size is 10,000 square feet, at 45 ELMWOOD ROAD, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On July 21, 2014, 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 David Himmelberger, Esq. and Cynthia Koss, (the "Petitioner").

Mr. Himmelberger said that the request is for a Special Permit for renovation and an addition. He said that it is a pre-exist nonconforming structure due to inadequate lot size at 8,690 square feet in a 10,000 square foot Single Residence District. He said that the pictures and drawings that were submitted show a very nice architectural design for the proposed addition. He said that the addition of windows on the second floor add to the attractiveness of the house. He said that the roofline will not be raised in any way. He said that the result is a seamless addition. He said that the Petitioners live in the home with their two children and are looking to expand the living areas to allow for a mudroom entry, an enlarged kitchen, and an addition of a family room with a master suite above. He said that the addition squares off the right side of the home and adds an addition to the left side. He said that the air conditioning condenser is outside of the setback and is further concealed beneath the screened porch adjacent to the walkout from the basement. He said that lot coverage will increase by 616 square feet. He said that the proposed project will not result in a structure that is more detrimental to the neighborhood than the existing nonconforming structure.

Mr. Himmelberger said that the project received Wetlands Protection Committee (WPC) approval. He said that the amount of impervious surface will be reduced. He said that they will relocate the driveway. He said that the Petitioner received a curb cut approval to relocate the driveway to Martin Road. He said that after speaking with the neighbors, the neighbor immediately abutting on Martin Road requested that the driveway be pushed back seven feet from the common property line. He said that the latest revision of the plot plan shows that shift.

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Mr. Himmelberger discussed the Building Inspector's comments about the property being in close proximity to a Flood Zone A and the need for a Letter of Map Amendment (LOMA) to be obtained from FEMA. Mr. Himmelberger said that he disagreed with that opinion. He said that one of the bases for that assertion was that there were conflicting site plans, one of which showed a flood plain running through the proposed structure, and the revised Flood Plain drawings that show that proposed structure is not in the Flood Plain. He said that the Surveyor has clarified that he contacted the Engineering Department and was given the data for the Flood Plain elevation that was from 1984. He said that the Town's GIS map clearly shows the Flood Zone A line well outside the existing house and the proposed addition. He said that the Flood Insurance Rate Map (FIRM) shows the existing house and proposed addition outside of Flood Zone A. He said that the bylaw imposes the Flood Plain District as an overlay district. He read an excerpt from Section XIVB.C.1.a. He said that the FIRM confirms the GIS map. He said that there is no portion of the Flood Zone that is anywhere close to the proposed addition. He said that the bylaw does not discuss homes in close proximity to Flood Zones. He said that he did not believe that there is a need for a Special Permit under the Flood Plain or Watershed Protection Districts.

The Board said that the lot size and setback from Martin Road are nonconforming.

Mr. Himmelberger said that there are landings within the setbacks but they both comply with the permissible size for a front or side setback. The Board said that here there is a unique definition of side yard because the size of the landings on the right side only talks about the square feet in the setback. The Board said that is not what the definition says. The Chairman read an excerpt from Section XIX.A of the Zoning Bylaw. He said that if there is something between the building wall and the side lot line, that is the side yard. He said that the definition does not say anything about applying to only those things that are beyond the 25 square feet.

Mr. Himmelberger said that it follows that the rationale for the setbacks is to avoid encroachment into the area. He said that it would be an anomalous situation if the house that is located 20 feet from the property line is entitled to a 25 square foot landing but a house that is set back 21 feet would not be allowed to extend and have 25 square feet in the setback area. He said that runs counter to the rationale for the purpose of setback.

The Board said that the definition says that if the stair landing is not over 25 square feet, it does not count for the side yard setback. Mr. Himmelberger said that the encroachment in the side yard setback begins at 20 feet. The Board said that Mr. Himmelberger was mixing side yard setback with side yard. The Board said that the definition of side yard says that if you have a stair landing not over 25 square feet in area, it does not count when you look at compliance with the side yard setback. The Board said that if it is over that, the implication is that it does because the side yard now does not have to go from the side of the building but from whatever the square footage of the landing is. The Board said that the side yard requirement for setback is 20 feet. The Board said that the bylaw does not say anything about what is in and what is out. Mr. Himmelberger said that is not the interpretation that is followed by the Building Inspector. He said that the rationale for setback requirements is to minimize encroachments within the setback area. He said that the proposed landings will be no more offensive within that area than what is permitted under the definition.

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The Board said that it appears that the landing that is further from Martin Road with a dimension of 5.8 feet wide was selected because the mudroom projects out. The Board said that pushing the mudroom out pushed the stair landing out. The Board said that the same is true for the other proposed landing in that the new addition pushes the stair landing out. The Board said that what is shown for both landings is 24 square feet in the setback.

Mr. Himmelberger said that, if the house was built out further to 20 feet, the landings would be permissible. He said that the portion of the landing in excess of 24 square feet is between the 24 square feet that is within the setback and the side of house. He said that if the side of the house replaced the few square feet, there would be more structure, which is counter-productive by having more structure closer to the property line. The Board said that would comply with the bylaw.

The Board said that the question is, if the side yard is from the house to the lot line and landings of 25 square feet or less do not count as part of that, do the proposed landings count. The Board questioned whether because the existing structure has a 21 foot setback, is the landing at 15.2 feet a new nonconformity. The Board said that would require a variance, not a special permit. The Board said that if the landing was 5 foot by 5 foot, there would be no issue. The Board said that if Mr. Himmelberger's interpretation is correct, then the 5 foot by 5.8 foot landing would be allowed.

The Board said that it was more persuaded by the interpretation that you do not look at the portion in the setback but look at the total structure. The Board said that the intent is probably that house is built right up to the setback and as long as it is a modest landing area, it is not counted.

The Board said that you do not get credit for anything that is between the wall of the building and the 20 foot required setback. The Board said that it would condition approval on the landings being 25 square feet or less. Mr. Himmelberger said that his client would accept that as a condition. He said that the two landings at the rear of the house that are currently shown at 24 square feet and 23 square feet in the setback shall be reduced to be not more than 25 square feet each.

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 45 Elmwood Road, on an 8,690 square foot corner lot in a Single Residence District in which the minimum lot size is 10,000 square feet, with a minimum front yard setback of 29.6 feet to Martin Road.

The Petitioner is requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that construction of two two-story additions, a screened porch, and three stair landings that will meet all setback requirements, on an 8,690 square foot corner lot in a Single Residence 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 7/9/14, revised 7/15/14 and 8/4/14, stamped by Bruce Bradford, Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 7/16/14, prepared by Williamson Building Works, LLC, and photographs were submitted.

On August 6, 2014, the Planning Board reviewed the petition and recommended that the Special Permit be granted.

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 although construction of two two-story additions, a screened porch, and three stair landings that will meet all setback requirements, on an 8,690 square foot corner lot in a Single Residence District in which the minimum lot size is 10,000 square feet 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 two two-story additions, a screened porch, and three stair landings that will meet all setback requirements, on an 8,690 square foot corner lot in a Single Residence District in which the minimum lot size is 10,000 square feet, subject to the condition:

- Each of the two landings on the rear of the structure on Elmwood Road shall be no more than 25 square feet.

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.

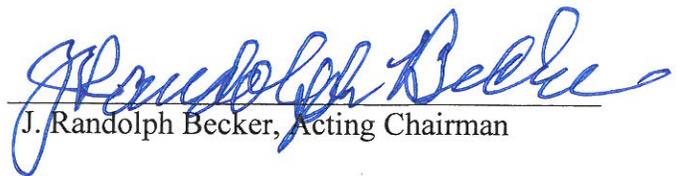
If construction has not commenced, except for good cause, this Special Permit shall expire two years after the date time stamped on this decision.

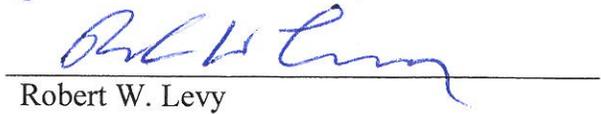
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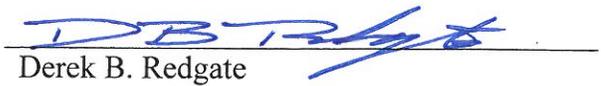
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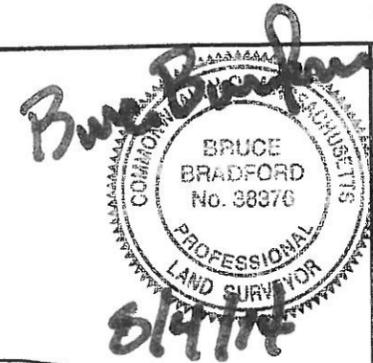
APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.


J. Randolph Becker, Acting Chairman


Robert W. Levy


Derek B. Redgate

cc: Planning Board
Inspector of Buildings
lrm



ESTABLISHED 1916

EMB

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ZONING INFORMATION

ZONE SR-10
PARCEL ID: 170-85

EXISTING
STRUCTURES: 942 S.F.
LOT COVERAGE: 10.8%

PROPOSED
STRUCTURES: 1,558 S.F.
LOT COVERAGE: 17.9%

DEED REFERENCE:
BOOK 25794 PAGE 549

PLAN REFERENCES:
BOOK 1810 PAGE 380

**PLAN OF LAND IN
WELLESLEY, MA**

45 ELMWOOD ROAD
TO ACCOMPANY THE PETITION OF
CYNDI NAKHLE

SCALE: 1 IN. = 20 FT.

DATE: AUGUST 4, 2014

DRAWN: JF

CHECK: BB

PROJECT NO. 24356

