



ZONING BOARD OF APPEALS

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ZBA 2015-36
 Petition of Ken Zhao
 100 Cedar Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, May 7, 2015, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of KEN ZHAO requesting a Variance and/or Modification of a Variance pursuant to the provisions of Section XIX and Section XXIV-D of the Zoning Bylaw for demolition and reconstruction on the same footprint of a two-story structure with basement and attic with less than required right side yard setbacks, construction of a two-story addition and porch with less than required front yard setbacks, and lot coverage of 20.08 percent. 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 a two-story addition with a two-car garage under and construction of a deck at the back that will meet all setback requirements, on an existing nonconforming structure with less than required front and right side yard setbacks, and less than required frontage, in a 10,000 square foot Single Residence District, at 100 CEDAR STREET, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On April 21, 2015, 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 Ken Zhao, the Petitioner.

Mr. Himmelberger said that the Petitioner is seeking modification of existing variances that were issued by past Zoning Boards of Appeal. He said that after sending a letter to the Board, he has since been retained by the title insurer to petition the County Commissioners for an official discontinuance of the portion of the old county road that is no longer being used as a way. He said that the County has no interest in the triangular piece of land which has been de facto discontinued since the 1935 new layout of Cedar Street in conjunction with the new exit ramps to Route 9. He said that he viewed this as a pro forma petition that will take the better part of a year.

Mr. Himmelberger said the discontinuance by the County of that portion of the way is the first of a two prong proceeding because they will then have to purchase the land from the County. He said that it is not a buildable portion and no one else can make use of it. He said that they hope to be the sole bidder.

The Board asked if the petition is premature. Mr. Himmelberger said that even the Petitioner did acquire the front parcel, he would still need to have the modification of the variance for the side yard setback for the proposed expanded new house. He said that the Petitioner is seeking relief tonight for which a portion

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of which will become moot within a year's time. He said that the Petitioner would like to proceed with seeking relief so that he can begin the construction process.

Mr. Himmelberger said that an issue that the Board has to wrestle with is the conveyance by the Town of its title in interest to the connecting strip from the parcel that was exchanged with the predecessor in interest, which is of record at the Registry of Deeds. He said that it was conveyed prior to the change to the Zoning Bylaw (ZBL) in which frontage had to span the width of the front of the parcel. He said that the lot does have the necessary frontage with the strip of land that was conveyed by the Town. He said that he was hopeful that the Board will be able to grant relief regardless if whether it was a valid grant of the strip of land or not.

Mr. Himmelberger said that it is an unusually shaped lot, being very narrow with an angled front. He said that there is a topographical issue as well. The Board asked where the drop off for wetlands is located in relation to the proposed deck. Mr. Himmelberger said that he submitted a Town Contour Plan to the Board. He said that it drops off after the first line of 80 feet, which is why the structure could not be pushed back. He said that they do have over 40 feet to what appears to be the street as it is currently laid out.

Mr. Himmelberger said that, based on the unusual circumstances and the unusual shape and topography of the lot, the Petitioner requests that the Board grant modification of the existing variance and grant a specific variance with regard to the front setback, if the Board feels that it needs to look behind the Town's grant. He said that the request for modification of the variance is for the right side yard setback.

The Board said that if it is going to grant modification of the variance, it will have to do so on the assumption that the Town deeded the trapezoidal piece of land to Mr. Castleman way back when and there is frontage up to Cedar Street.

The Board said that if it grants relief, the Petitioner will be taking a big risk by building a large house there and someday not be able to sell it because he does not own access to it. Mr. Himmelberger said that if the Petitioner does not prevail with the County Commissioner, they will still have access to the old way which, if they do not prevail will not have been discontinued. The Board said that the Petitioner may not own the existing driveway. Mr. Himmelberger said that the argument is that it is a way that is currently not being utilized. The Board said that the Petitioner will still be taking a risk.

A Board member asked if the height calculation had been done by the Surveyor. Mr. Zhao said it was done by the architect. The Board said it will be a very tall structure. The Board said that it has to rely on professionals who determine boundaries. The Board said that granting relief will be contingent on a professional land surveyor certifying the height as being under 36 feet. Mr. Himmelberger said that the Petitioner would accept that as a condition. The Board said that the decision will not be filed with the Town Clerk until the Board has received the height certification.

A Board member said that he was concerned about the size of the house. He said that it will be over 3,400 square feet and the lot is 12,400 but a lot of it is unbuildable. He said that he has not seen a lot of big houses on that part of Cedar Street. Mr. Himmelberger said that a few have started to go in. He said that this lot is unique in that it has the benefit of having conservation land to its right. The Board said that it is a very visible piece of land. The Board said that a lot of cars go down Cedar Street from Route 9.

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.

The Board is of the opinion that modification of previously granted Variances, ZBA 51-1, ZBA 70-5, and ZBA 81-21 may be granted to allow for demolition and reconstruction on the same footprint of a two-story structure with basement and attic with less than required right side yard setbacks, construction of a two-story addition and porch with less than required front yard setbacks, lot coverage of 20.08 percent, construction of a two-story addition with a two-car garage under and construction of a deck at the back that will meet all setback requirements.

Therefore, the requested modification of Variances from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw is granted to allow for demolition and reconstruction on the same footprint of a two-story structure with basement and attic with less than required right side yard setbacks, construction of a two-story addition and porch with less than required front yard setbacks, lot coverage of 20.08 percent, construction of a two-story addition with a two-car garage under and construction of a deck, subject to the following conditions:

1. A height calculation from a registered land surveyor shall be submitted showing that the height from average grade shall be less than 36 feet
2. The owners shall provide a dormer on the west elevation and carry the corner boards down to the foundation to break up the wide façade.
3. TLAG calculations shall be submitted.
4. The project shall be in compliance with Order of Conditions, MA DEP #324-0748.

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 Variance shall expire one year after the date time stamped on this decision.

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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.


Richard L. Seegel, Chairman


Robert W. Levy


Walter B. Adams

cc: Planning Board
Inspector of Buildings
lrm

