

TOWN OF WELLESLEY



MASSACHUSETTS

## ZONING BOARD OF APPEALS

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TELEPHONE  
(781) 431-1019 EXT. 2208  
web: www.wellesleyma.gov

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2015 OCT 22 P 4:28

ZBA 2015-74  
Petition of Dougal & Ursula McMillan  
31 Clovelly Road

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Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, September 10, 2015, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Dougal & Ursula McMillan requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing garage, construction of a two-story addition, construction of a one-story attached garage and construction of porches, on an existing nonconforming structure with less than required right side yard setbacks, at 31 Clovelly Road, in a 10,000 square foot Single Residence District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On August 24, 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 Dougal and Ursula McMillan, the Petitioner. Mr. McMillan submitted two letters of support from the abutters on either side. He said that they have lived there for one year. He said that the request is for a special permit. He said that there is an existing nonconforming setback on the right side of the house. He said that the new plan comes in one foot and is no more nonconforming.

The Board asked if the addition could be pushed further in to attain the conforming setback at 20 feet. The Board asked if the addition was designed for symmetry at the back. The Board said that if a homeowner wants to put an addition on where it could be conforming, there has to be strong case for not doing that. The Board said that there was nothing in the layout that showed that could not be done.

The Board said that it could continue the hearing or allow the petition to be withdrawn without prejudice. Mr. McMillan said that he would prefer to continue the hearing because it will only be a small change. The Board said that if the architect thinks that symmetry is important, he can shrink the addition on both sides or he can come before the Board to defend the design.

The Board said that it was good that Mr. McMillan spoke with his neighbors and that they are in support of the plans.

The Board said that the Planning Board had recommended that the ZBA defer action until the side yard setback encroachment is eliminated, a tree protection plan is submitted identifying trees to be retained and protected and the location of new landscaping.

Mr. McMillan said that he did provide some information regarding the trees. He said that the prior owner removed all of the trees in the yard back to the Brook Path. He said that he has since worked with the Town to plant three new trees. He said that they intend to keep the existing hedge in the front. He said that there is no intention to remove any more trees. The Board said that the Planning Board wanted to know how the trees will be protected during construction. The Board said that the Planning Board also wanted to have a Photometric Plan identifying the proposed lighting and the associated foot candles. The Board said that it did not think that plan is necessary. The Board said that would be an expensive thing for a homeowner to do.

Mr. McMillan said that he spoke with his neighbors and told them that the lighting will point down.

The Board asked about water issues. Mr. McMillan said that it is a flat lot. He said that there are wetlands at the rear left corner. He said that the WPC wrote a letter stating that it was not a concern.

There was no one present at the public hearing who wished to speak to the petition.

The Board voted unanimously to continue the hearing to October 8, 2015.

The Board said that a TLAG affidavit should also be submitted with the new plans.

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**October 8, 2015**

Presenting the case at the hearing was Dougal McMillan, the Petitioner. Mr. McMillan said that the last time that he was before the Board, he submitted a plan for a 1,600 square foot addition. He said that the Board had some concern about the setback of the proposed addition. He said that the side yard setback was at 19.4 feet and that has been increased to 20.2 feet. He said he submitted a revised plot plan and architectural plans that match.

The Board said that it appears that a lot of trees have been removed from the rear of the property. Mr. McMillan said that the previous owner wanted to build a very large home. He said that he took down all of the trees except at the buffer to Fuller Brook Path. He said that the neighbors were disappointed that the trees were removed. He said that the prior owner started cutting down neighbors' trees.

Mr. McMillan said that he has a positive relationship with his neighbor, Gig Babson. He said that there are tall shrubs between the properties that are located on Ms. Babson's property. He said that he and Ms. Babson are working jointly to maintain them. He said that Ms. Babson knows that Mr. McMillan is committed to using Hartley Greymount to maintain the shrubs. He said that the shrubs are a feature of the property. He said that what he is trying to do is to create a corner to look at those trees. He said that his interest is in maintaining what is there and in adding additional trees in the front to replace the ones that the prior owner removed. He said that he is trying to increase the green on the property, not reduce it.

The Chairman thanked Mr. McMillan for following the Board's advice in maintaining a conforming setback. A Board member said that his initial concern was that it appeared that the Petitioner would not suffer much by moving the proposed addition over a foot to comply with the setback regulation. He said that he appreciated that the Petitioner listened to the Board's suggestion.

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 31 Clovelly Road, in a 10,000 square foot Single Residence District, with a minimum right side yard setback of 18.4 feet.

The Petitioner is requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing garage, construction of a two-story addition, construction of a one-story attached garage and construction of porches, on an existing nonconforming structure with less than required right side yard setbacks, in a 10,000 square foot Single Residence District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan, dated 7/6/15, a Plot Plan, dated 9/30/15 and a Height Certification Plot Plan, dated 8/18/15, stamped by Robert F. Drake, Professional Land Surveyor, Miscellaneous Items for 31 Clovelly Proposed Construction, Existing and Proposed Floor Plans and Elevation Drawings, dated 9/15/14, revised 9/18/15, prepared by John Chapman, Architect, and photographs were submitted.

On 6/15/15, Pam Helinek, Wetlands Administrator, reviewed the project and stated that it will have no impact, temporary or permanent on the Wetlands Resource Area or Buffer Zone, and that there is no requirement to file with the Wetlands Protection Committee for this project.

On October 7, 2015, the Planning Board reviewed the petition and recommended that the Zoning Board of Appeals require a Tree Protection Plan, a Photometric Plan and a Stormwater Management Plan.

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 garage, construction of a two-story addition, construction of a one-story attached garage and construction of porches, on an existing nonconforming structure with less than required right side yard setbacks 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.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for demolition of an existing garage, construction of a two-story addition, construction of a one-story attached garage and construction of porches, on an existing nonconforming structure with less than required right side yard setbacks, in accordance with the revised plot plan dated 9/30/15.

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 2015-74  
Petition of Dougal & Ursula McMillan  
31 Clovelly Road

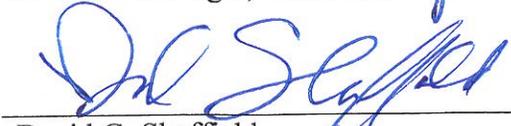
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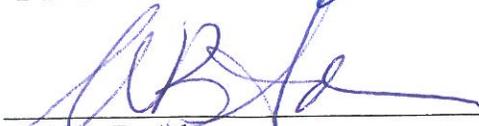
APPEALS FROM THIS DECISION,  
IF ANY, SHALL BE MADE PURSUANT  
TO GENERAL LAWS, CHAPTER 40A,  
SECTION 17, AND SHALL BE FILED  
WITHIN 20 DAYS AFTER THE DATE  
OF FILING OF THIS DECISION IN THE  
OFFICE OF THE TOWN CLERK.



Richard L. Seegel, Chairman



David G. Sheffield



Walter B. Adams

cc: Planning Board  
Inspector of Buildings  
lrm

