



ZONING BOARD OF APPEALS

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ZBA 2015-75
 Petition of Silvano Charles Malafaia
 16 Riverdale Road

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 Silvano Charles Malafaia requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that construction of a second story addition and construction of a two-story addition that will meet all setback requirements, on an existing nonconforming structure with less than required front yard and right side yard setbacks, at 16 Riverdale 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.

A Board member said that he worked with the Architect of record for this petition in the past. He said that he felt that he could review the petition impartially.

Presenting the case at the hearing was Silvano Malafaia, the Petitioner. He said that also present were his daughter, Renata, and the Architect, Douglas Wohn. Mr. Malafaia said that he is the new homeowner. He said that they designed the project to update the house from 1916 so that they can live there. He said that they designed everything in the addition to respect the setbacks. He said that the existing house has a nonconforming front yard setback.

Mr. Malafaia said that he had a letter of support from some of the neighbors.

Mr. Wohn said that Mr. Malafaia owns a large piece of land at the back. He said that it was discovered at the last hour that the lots could not be combined without a variance.

The Board asked about TLAG. The Board said that because the property is located in a 10,000 square foot district, the TLAG threshold that applies is 3,600 square feet. The Board asked if the house will exceed 3,600 square feet when it is done. The Board said that the family room that is shown on Plan A-4 is a huge third floor space. Mr. Malafaia said that it is open space. The Board said that it would be calculated as part of the TLAG.

The Board asked about the height of the house with the additions. Mr. Malafaia said that it will be 33 feet. The Board said that on Plan A-5, the height is shown as 35 feet. The Board said that it shows that to a straight horizontal line and that line was not identified as average grade. The Board said that the height has to be measured from average grade. Mr. Malafaia said that it was shown on the plot plan.

The Board said that it was concerned about not getting enough detail. The Board said that it needs to see a TLAG Affidavit. The Board suggested that the petition be continued to next month.

The Board said that the Petitioner may be trying to build too much house on this lot. The Board said that the Petitioner may not be allowed to have that large a third floor. The Board said that they may have to modify the plans.

Jane Gavis, 20 Riverdale Road, said that she is the abutter on the nonconforming side. She asked if she should speak now or wait until the continued hearing. The Board said that Ms. Gavis should wait because the plans could change.

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

October 8, 2015

Presenting the case at the hearing were Silvano and Elizabeth Malafaia, the Petitioner, and Douglas Wohl, Architect. Mr. Malafaia said that the last time that he had been before ZBA, the Board had an issue with the TLAG. He said that the TLAG was over what the Board thought would be appropriate for the location. He said that they reduced the size and lowered the height. He said that he reviewed the TLAG calculations with the Building Department. He said that he met with several neighbors. He said that all of the neighbors that they were able to reach sent letters to the Board. He said that the proposed addition will not be in the setbacks.

Mr. Malafaia said that the house was reduced in size by 600 to 700 square feet. He said that they shrunk the second floor. He said that they removed the living space from the attic and lowered the roof. He said that there will be no access to the third floor.

A Board member said that it is a more attractive design. He said that a number of letters were submitted from the neighbors saying that Mr. Malafaia had discussed the plans with them and they were either supportive of or did not oppose the plans. He said that the Board likes to know that the Petitioner has spoken with the neighbors so that they know what is intended and can come to the hearing to speak on their own behalf. He said that he appreciated the efforts that Mr. Malafaia made to reach out to the neighbors.

The Board asked about height of the building from average grade. The Board said that Plan A5 shows a height of 33.4 feet but does not say to what. Mr. Malafaia said that is the highest point of the house. He said that the average grade would be below that. The Board said that the house cannot exceed a certain height from average grade. Mr. Malafaia said that the height from average grade is less than 30 feet. The Board said that it will need to see what the average grade is and what the height of the building is above average grade. The Board said that it does not to appear to exceed the height limitation.

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Jane Gavis, 20 Riverdale Road, said that she lives on the side that the variance is occurring on. She said that the site plan that was dated August 5, 2015, did not illustrate the irregular areas within the setback or allow them to see where the setback truly is, which prohibited them from determining whether the proposed structure would be more detrimental.

Ms. Gavis said that she wanted to express her concerns despite the lack of irregular variance information for the proposed changes. She said that they have lived next door to 16 Riverdale Road for 18 years. She said that during that time they have seen 16 of the 24 houses turn over. She said that, despite a 57 percent turnover, including many homes which have since been updated or remodeled, all of the new homeowners have chosen to keep the house size proportional to other house sizes on the street, which has allowed the street to maintain its older charm, which not only makes their house visually attractive but is also valued by existing homeowners and buyers looking to purchase in the area. She submitted photographs of houses on the street.

Ms. Gavis said that, of the recent sales with the past 24 months, it is only the new owners at 16 Riverdale Road who want to change the roof line and add addition square footage, which will set a precedent of making the proposed structure the highest on the street, despite the fact that eight of the 28 lots are larger in square footage.

Ms. Gavis said that she hoped that the Board would not only take into consideration the scope and size of the project but also the snow and water runoff from what is now pervious surfaces and will become impervious. She said that the majority of the snow and water will come down the north side of the roof which is the longest continuous roofline. She said that, after speaking with Town Engineers, they learned that any new construction must have no more runoff than the existing property. She said that she hoped that a detailed runoff capture plan would be required from the owners.

Ms. Gavis said that she would like the Board to take into consideration the placement of air handlers. She said that they would like to see protection for the critical root zone and drip line for the greenery between the two houses, as they share the same 10 foot perimeter between them. She said that none of those items were included in the plans that submitted to the Board. She said that all of her concerns are relevant due to the close proximity and the higher elevation to her home. She said that her house sits lower than 16 Riverdale Road. She said that she hoped that the Board would consider this project for the detrimental effects on the neighborhood and the Charles River at the bottom of the road.

Ms. Gavis said that she would like the Board to consider scope and size in their decision. She welcomed her new neighbors and said that she hopes that they enjoy the property as many have before them.

The Board said that air handling units are prohibited in the required setbacks. The Board said that although they are not shown on the drawings, the Building Inspector will ensure that the units will not be located within the required setbacks.

Ms. Gavis said that a TLAG of 3,645 will exceed what is allowed. The Board said that the lot is nonconforming and is not subject to Large House Review.

The Chairman said that he drove down the street more than once. He said that existing house is substantially smaller than most of the other houses on the street. He said that Ms. Gavis' house and the

house on the other side are substantially higher. He said that what they are proposing to be build is approximately five feet lower than what they could build.

The Board said that the Petitioner has responded to its requests. The Board said that the Petitioner reduced the size and the height of the building. A Board member said that he thought that they will be dramatically improving this property.

The Board asked about control of runoff from the property. Mr. Wohl said that they will discuss that with the Landscape Architect. He said that they will consider alternative materials in front of the garage.

Mr. Wohl said that this house is lower in the front than any other house on the street. He said that the proposed addition will be at the back. He said that it will be the only house with a one story façade in the front. He said that the houses on the right and the left have two or three story façades. He said that the Petitioner has more than a quarter of an acre of land in the rear. He said that there are no concerns about abutters to the rear. He said that the setbacks will be complied with.

The Board asked where the current rain water conductors are located. Mr. Malafaia said that the water will go from gutters to drywells. The Board confirmed that the rainwater will go through conductors into drywells as part of this project.

Statement of Facts

The subject property is located at 16 Riverdale Road, in a 10,000 square foot Single Residence District, with a minimum front yard setback of 18.2 feet and a minimum right side yard setback of 17.3 feet.

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 second story addition and construction of a two-story addition that will meet all setback requirements, on an existing nonconforming structure with less than required front yard and right side yard setbacks, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan, dated 8/5/15, stamped by Frank Iebba, Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 8/18/15, revised 9/25/15, prepared by International Builders, Inc., and photographs were submitted.

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 construction of a second story addition and construction of a two-story addition that will meet all setback requirements, on an existing nonconforming structure with less than required front yard and 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 construction of a second story addition and construction of a two-story addition that will meet all setback requirements, on an existing nonconforming structure with less than required front yard and right side yard setbacks, subject to the following conditions:

1. A plan showing the location of the drywells shall be submitted.
2. A plan showing the height from average grade shall be submitted.

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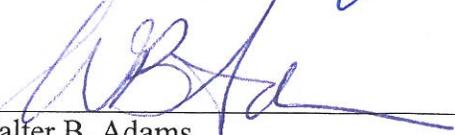
APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.



Richard L. Seegel, Chairman



David G. Sheffield



Walter B. Adams

cc: Planning Board
Inspector of Buildings
lrm

