



ZONING BOARD OF APPEALS

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ZBA 2015-76
 Petition of Pamela & David McMahon
 81 Russell 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 Pamela & David McMahon requesting a Variance pursuant to the provisions of Section XIVE, Section XIX and Section XXIV-D of the Zoning Bylaw for demolition of an existing nonconforming structure and garage and construction of a new two-story structure with basement with less than required front and left side yard setbacks, on a 9,740 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, in a Water Supply Protection District, at 81 Russell Road.

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 David Himmelberger, Esq. and Pamela McMahon, the Petitioner.

Mr. Himmelberger said that the request is for a variance. He said that the Petitioner came before the Board in March of 2014 and was granted a variance to construct a contemporary home on a nonconforming lot that is 9,740 square feet in a 10,000 district. He said that the existing structure has a 9.4 foot left side yard setback. He said that the garage has a zero front yard setback.

Mr. Himmelberger said that after his client gave further consideration to the contemporary design and the greater cost per foot to build it, she decided to go with a more traditional look. He said that the Petitioner is seeking a new variance. He said that the one year period expired in March of 2015 for the previously granted variance.

The Board asked what the variance was granted for. Mr. Himmelberger said that the variance was granted based on the topography because the lot falls 43 feet from the road to the pond. He said that after some discussion at the previous hearing, the garage was pushed back to 17 feet. He said that the 9.4 foot left side setback remained and the right side yard setback was 25 feet 9 inches.

Mr. Himmelberger said that with the new design the garage and driveway will remain as is. He said that the left side yard setback is improved to 12 feet and the right side yard setback is improved to 28.5 feet.

The Board said that the Planning Board made an interesting comment that by redoing this, the Petitioners may have lost their hardship. Mr. Himmelberger said that he did not believe that they had because the topography has not changed and with the expiration of the variance, they are back to square one.

Mr. Himmelberger said that the Petitioners have spoken with the neighbors. He said that the Wetlands Protection Committee (WPC) voted to approve this as a minor plan change that did not require formal amendments to the Order of Conditions. He said that the structure has been straightened to be parallel with the left lot line. He said that the side yard setbacks have been improved. He said that the only modest change is the slight extension to the rear of five feet. He said that it will have a 33 foot setback to the pond. He said that there is no abutter there. He said that the request is that the Board apply the same rationale and find that a variance is warranted, given the topography.

The Board said that there are two different plot plans, one dated July 15, 2015 and the other dated August 3, 2015. Mr. Himmelberger said that the difference between the plot plans is that there was a request that the FEMA Flood Zone be added. He said that is now shown on the August 3rd plot plan.

The Board confirmed that this property has only been before the Board twice. The Board said that the first time was for a contemporary home that was going to be built on-site. Mr. Himmelberger said that they were continued once with the contemporary home. He said that the first time they were before the Board, the garage was closer to the street. He said that they pushed it back to 17 feet. He said that the garage will be attached and part of the contiguous structure.

The Board discussed the difference in grade. The Board said that the elevations submitted show a flat site. Ms. McMahon said that the basement will be inside the hill. The Board asked about average grade around the house. Mr. Himmelberger said that a Building Height Calculation grid was submitted from the Engineer. He said that a colored rendering was submitted that shows the slope. He said that the calculations from J. K. Holmgren Engineering, Inc. show the height from average grade at 32 feet.

The Board said that the rendering does not show retaining walls. The Board said that is a limitation of what the manufacturer of modular homes can do. The Board said that the Petitioner might need to have an architect render drawings in a way that the Board can understand how it will sit on the site.

The Board asked what will be presented to the Building Inspector. The Board said that what was submitted to the Board is what the Building Inspector will look at. The Board said that the Building Inspector should get a designed foundation plan and modular component drawings. Mr. Himmelberger said that the submittal is compliant with the requirements.

The Board said that the previous plans show an accurate slope of the land. The Board said that the new plans do not. The Board said that it is being asked to depend on a rendering for the side elevation. Mr. Himmelberger said that there is the Building Height grid from the Engineer that shows the proposed building and the location points from which the elevations were derived. The Board said that it could not approve something that it does not understand.

Mr. Himmelberger requested that the petition be continued to next month. The Board said that the plans have to be something that the Board can understand. The Board said that the plans need to show an ordinary house and the topography as it sits on the lot. The Board said that it cannot approve a rendering.

The Board asked if a Review of Adequacy has been done. Mr. Himmelberger said that they cannot do that until they get approval of the variance. He said that they understand that they will need to do that.

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

October 8, 2015

Presenting the case at the hearing were David Himmelberger, Esq., and Pamela McMahon, the Petitioner. Mr. Himmelberger said that at the last hearing, the Board asked that elevations that show the placement of the proposed home relative to the slope and land be submitted. He said that the request is for a variance based on the topography of the lot. He said that there is a 34 percent grade from top to bottom with a slope of 43 feet. He said that it will be replacing a zero setback garage. He said that the proposed front yard setback will remain at 17 feet. He said that the left side yard setback will be improved from 9.4 to 12 feet, the right side yard setback will be improved from 25.9 to 28.5 feet, and the rear yard setback will be 33 feet to the pond and 50 feet to the property line.

The Board asked about the existing left side yard setback. Mr. Himmelberger said that it is 9.4 feet. The Board said that the proposed house looks like it is closer except for one wing on it. The Board said that they will be increasing the encroachment in the side yard setback substantially. Mr. Himmelberger said that the Board previously granted a variance that was similar on the left side. He said that variance expired. He said that the homeowner redesigned the house from a contemporary to a more traditional colonial. He said that the neighbors are in support of the project. He said that it is a challenging lot due to the steep slope.

The Board asked about the existing right side yard setback. Mr. Himmelberger said that the existing house is 23.4 feet and will be improved to 28.5 feet. He said that the right side yard setback was previously not an issue. The Board asked about sliding the whole structure further north to create a more reasonable left side yard setback. Mr. Himmelberger said that they need 30 feet for the side entry garage. The Board said that they have seven feet to play with. Ms. McMahon said that the issue last time was that the driveway is steep. She said that they have to build a retaining wall. She said that they did not want to have the retaining too close to the neighbors. She said that this placement was suggested by the previous Board. She said that the proposed garage and driveway are the same as what was previously approved.

The Board asked about the large impervious patio and spa next to the house. The Board asked about the heights of the walls around that area. Mr. Himmelberger said that they are less than four feet on all sides. He said that the rear wall runs from above the proposed boulders. The Board confirmed that they will be building up that side.

The Board said that it received an adverse recommendation from the Planning Board. Mr. Himmelberger said that the recommendation was unchanged from the previous hearing.

The Chairman said that it seemed to him that the first house that was proposed was smaller. Mr. Himmelberger said that the previously approved footprint was 1,488 square feet and the currently proposed footprint will be 1,650 square feet. The Chairman said that it will be over 10 percent bigger. Mr. Himmelberger said that lot coverage will remain well within the permissible level at 16.9 percent.

The Board said that the proposed house coming closer to the pond is partly a function of the slope from Russell Road to get down to the garage. The Board said that it causes the entire project to shift toward the

pond. Mr. Himmelberger said that the slope is most severe at the area closest to the road and the area closest to the pond. He said that the house is being situated in the area that is the least steep.

The Board asked how runoff from the patio, spa and driveway will be handled. Ms. McMahon said that she is willing to make the patio area more pervious. She said that the Wetlands Protection Committee reviewed the proposed changes and thought they were minor modifications from the previously approved plan. The Board asked how the runoff is currently being handled. Drew Garvin, Holmgren Engineering, said that there is nothing currently in place to handle runoff from the patio area. Ms. McMahon said that the previous plan did show a drywell. Mr. Garvin said that it can be addressed, if that is what is required by the Board.

Ms. McMahon said that the previously approved design was contemporary and had a severe roofline slope. She said that part of the reason that there is more square footage in the currently proposed design is that the more traditional shape of the house allowed them to get more bedrooms upstairs. The Board said that the whole building will be pushed back from Russell Road. The Board said that the existing garage is on the road.

Mr. Himmelberger said that the first iteration of the house proposed in 2014 showed the house with a 6 foot front yard setback. He said that the Board suggested a 17 foot front yard setback as being more appropriate.

The Board asked about the original Order of Conditions. Mr. Himmelberger said that a letter from Pam Helinek, Wetlands Administrator, regarding what was considered to be a minor plan change by the WPC, was submitted to the Board. The Board said that it would like to see the original Order of Conditions to see what the WPC voted on as to how to handle the water.

Mr. Himmelberger asked if it would be sufficient for the Board, as a condition, that the Order of Conditions that was issued by the WPC is followed. He said that they satisfied the WPC with the first design. The Board said that although the WPC considered the changes to be minor, the Board needs to know how runoff was handled and how it will be handled now.

The Board said that the roof shapes are different from what was submitted for the prior project. The Board said that the roof shapes caused the runoff to be handled in a certain way. The Board said that the new roofs will direct water in other ways and there are impervious materials at the driveway and the patio. The Board said that it is concerned about where the water will be going. The Board said that the house is located next to Morses Pond. The Board said that the Engineer said that they had not thought about having drywells but would consider it. A Board member said that he was trying to focus more on protection that may be required in the construction process. Ms. McMahon said that there is a plan that shows a drywell.

The Board said that it did not know what the WPC looked at when they said it was a minor change. The Board said that it did not know if the WPC looked at the footprint or the various roofs that the water will be coming down off of, and how different that is from the house that was originally approved. Mr. Himmelberger asked if it would be sufficient for the Board to impose a condition that all roof runoff be directed into drywells. The Board said that it cannot design a project but it seems logical that the water needs to be controlled. Mr. Himmelberger said that the Petitioner will accept that as a condition.

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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 81 Russell Road, on a 9,740 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, in a Water Supply Protection District, with a minimum front yard setback of 29 feet and a minimum left side yard setback of 9.4 feet. The existing garage has no front yard setback.

The Petitioner is requesting a Variance pursuant to the provisions of Section XIVE, Section XIX and Section XXIV-D of the Zoning Bylaw for demolition of an existing nonconforming structure and garage and construction of a new two-story structure with basement with less than required front and left side yard setbacks, on a 9,740 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, in a Water Supply Protection District

Variance Request, Plot Plan, dated 7/15/15 and Site Plan, dated 8/3/15, stamped by Scott M. Faria, Professional Land Surveyor, Building Height Calculation, Elevations, dated 9/21/15, and Site Plan, dated 8/3/15, revised 9/21/15, prepared by J.K. Holmgren Engineering, Inc., Proposed Floor Plans and Elevation Drawings, dated 8/15/15, prepared by Apex Homes, Inc., Rendering of Proposed Structure, and a photograph were submitted.

On August 6, 2015, the Wetlands Protection Committee voted to approve a minor requested change to the Order of Conditions, MassDEP File #:324-0707. The proposed change was considered a "minor" plan change, not requiring a formal amendment of the Order of Conditions.

On October 7, 2015, the Planning Board reviewed the petition and recommended that the Zoning Board of Appeals deny the variance.

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 literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the Petitioner owing to circumstances relating to topography of the land, which does not generally affect the zoning district that it is in, and desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

Therefore, the requested Variance 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 of an existing nonconforming structure and garage and construction of a new two-story structure with basement with less than required front and left side yard setbacks, on a 9,740 square foot lot in a Single Residence District in which the

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minimum lot size is 10,000 square feet, in a Water Supply Protection District, subject to the following condition:

Runoff from hardscapes and roofs shall be handled with drywells.

The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed construction 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


David G. Sheffield


Walter B. Adams

cc: Planning Board
Inspector of Buildings
lrm

