



ZONING BOARD OF APPEALS

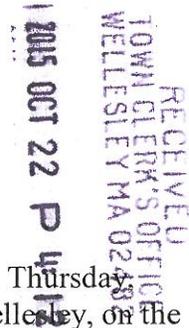
TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992

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ZBA 2015-77
 Petition of Lina Musayev
 26 Cedar Street



Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, October 8, 2015, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Lina Musayev requesting a Variance pursuant to the provisions of Section XIX and Section XXIV-D of the Zoning Bylaw for construction of a one-story addition with less than required left side yard setbacks, on an existing nonconforming structure with less than required left side yard setbacks, in a 10,000 square foot Single Residence District, in a Water Supply Protection District, at 26 Cedar Street.

On September 22, 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 Robert Alfred and Lina Musayev, the Petitioner. Mr. Alfred said that the request is for a variance for a one-story addition with less than required left side yard setbacks on an existing nonconforming structure. He said that the request is for a small addition for a bathroom, closet space and to bring the laundry up from the basement onto the first floor. He said that they purchased the house without a first floor bathroom despite knowing that it would be an issue, primarily because it provided them the rare opportunity to live in Wellesley and for their daughter to attend Wellesley schools.

Mr. Alfred said that the reason that they continue to feel that not having a first floor bathroom is such a big problem is that they desire to have their families come from out of town to visit and stay with them. He said that they both have elderly grandmothers who have difficulty going over stairs. He said that the way that the house is now, it is not conducive to having their grandmothers visit. He said that they would not be able to access a bathroom. He said that their anxiety about that has prevented them from coming to visit even for a short time. He said that they have a great need for closet space on the first floor. He said that currently they have no place to put coats or boots. He said that this project would resolve both of those issues. He said that he discussed the plans with both abutting neighbors, who have expressed support for the project. He said that they designed the project to fit as seamlessly as possible with the design of the house. He said that they will be squaring off an "L" shaped gap in the floor plan. He said that they feel that the addition will fit in nicely with the neighborhood and would not be a detriment.

The Board asked if this is the only location of an addition where a bathroom can go. Mr. Alfred said that any other location would require them to redo the interior of the house and replace kitchen cabinets, appliances, and adjustment of the heating to put in a new entry way. He said that it would complicate the project to the extent that it would not be feasible for them.

The Board said that the struggle for the Board is that the Petitioner is seeking a variance, which is a standard that is difficult in the Commonwealth. The Board said that it is a State Statute and the local bylaw requires that, in order to grant a variance, that the circumstances requiring the variance have to relate to topography, shape, or soil condition. The Board said that the house is not sited perfectly but it is a fairly regularly shaped lot. The Board said that its struggle is how it will be able to make a finding that the hardship is related to one of the three criteria. The Board said that if the Petition were to keep the setback at 14.1 feet, that would necessitate a special permit which allows the Board more discretion and the Board would be more apt to rule favorably, based upon the legal standards.

The Board said that it would be good to see the rest of the floor plan. The Board asked if there is a way to have all of the facilities sought but with 18 inches less. Mr. Alfred said that they have done a lot of work with the designer trying to make the project as small as possible. He said that it is as small and as narrow as it can go. He said that they thought that the hardship was caused by shape and topography. He said that the house is angled to the side of the lot. He said that it is further to the left. He said that they are trying to square off the side of the house without going further left than the existing house. He said that the angle and shape of the house and the lot are what are causing this issue. The Board said that the issue is how house was sited, not the shape of the lot. Mr. Alfred said that the bylaw does say the shape of the structure or the property. He said that their position is that the hardship is due to both of those and how they interact together. He said that, in addition to that, the lot has a severe slope at the back and a slope up on the right going down toward the front of the house. He said at the front of the house there is a steeper drop off in grade going into the front yard. He said that those grading issues make it impossible to put the addition anywhere else on the house. He said that they have water runoff issues with water being held up against the foundation. He said that they currently have problems with water in the basement whenever it rains. He said that the water backs into the "L" shape on the left and is held and pooled there. He said that this project will allow them to create a much more efficient way for water to run off around the house. He said that issue is caused by the topography of the land. He said that the proposed project is the only way that they would be able to put in a bathroom and solve the water issue in the basement, owing to the cost of the project.

Mr. Alfred said that his house sits lower than the house on the right.

The Board said that the bylaw states that the hardship shall not have been self created. The Board said that the Petitioner's predecessor sited the house on the lot. Mr. Alfred said that the house was built in 1860. The Board said that the lot lines may have been established after construction of the house.

A Board member said that he was trying to justify lot shape. He said that Wellesley has this situation quite a bit in certain parts of town. He said that this is an unusual situation where the homeowners are trying to extend along the side of their home in a way that makes the most sense. He said that the lot shape, given that it is a small scale project and not extending more, it makes common sense. He said that he was considering lot shape as a criteria for granting a variance.

The Board discussed precedence setting. The Board said that every application is decided on its own merits. The Board said that this could be considered to be de minimis.

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A Board member read the Statute regarding soil conditions, shape or topography of such land or structures. He questioned whether such or land or structures affects only topography or soil conditions and shape as well. He said that the same language is in the bylaw. He questioned how topography would affect the structure. A Board member said that it will not affect the district in which it is located, has not been self created, and is an extremely modest request. Mr. Alfred said that they have the support of the neighbors at 24 Cedar Street, who would be most impacted by the project.

Kathy Rodrigue, 24 Cedar Street, said that she did not have any issues with the project.

Mr. Alfred said that they searched within the confines of the walls as they stand trying to figure out a way to put a bathroom on the first floor. He said that anything that they could think of would substantially harm the interior space. He said that it is extremely important for them to be able to have their family come over and feel comfortable in the house. He said that after everything that they looked at, they came to this option as the only solution to the issue.

A Board member said that there is a skewing of the lot shape with the existing house.

Statement of Facts

The subject property is located at 26 Cedar Street, in a 10,000 square foot Single Residence District, in a Water Supply Protection District, with a minimum left side yard setback of 14.1 feet.

The Petitioner is requesting a Variance pursuant to the provisions of Section XIX and Section XXIV-D of the Zoning Bylaw for construction of a one-story addition with less than required left side yard setbacks, on an existing nonconforming structure with less than required left side yard setbacks.

Letter in support of a Variance, dated 9/14/15, from Lina Musayev & Robert Alfred, A Plot Plan, dated 9/14/15, stamped by Thomas P. Bernardi, Professional Land Surveyor, Existing & Proposed Floor Plans & Elevation Drawings, dated 8/12/15, prepared by David Ronci, and a photograph were submitted.

On October 7, 2015, the Planning Board reviewed the petition and recommended that the variance be denied.

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 shape of the such 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. It is the opinion of this Authority that the scope of the project is small in square footage and the dimensional variance is 18 inches.

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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 for construction of a one-story addition with less than required left side yard setbacks, on an existing nonconforming structure with less than required left side yard setbacks, in accordance with the submitted plot plan and construction drawings.

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.

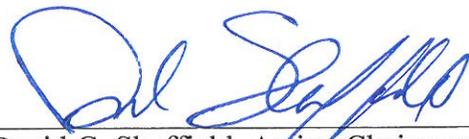
If construction has not commenced, except for good cause, this Variance shall expire one year after the date time stamped on this decision.

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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.



David G. Sheffield, Acting Chairman



Robert W. Levy



Derek B. Redgate

cc: Planning Board
Inspector of Buildings
lrm

PLAN OF LAND

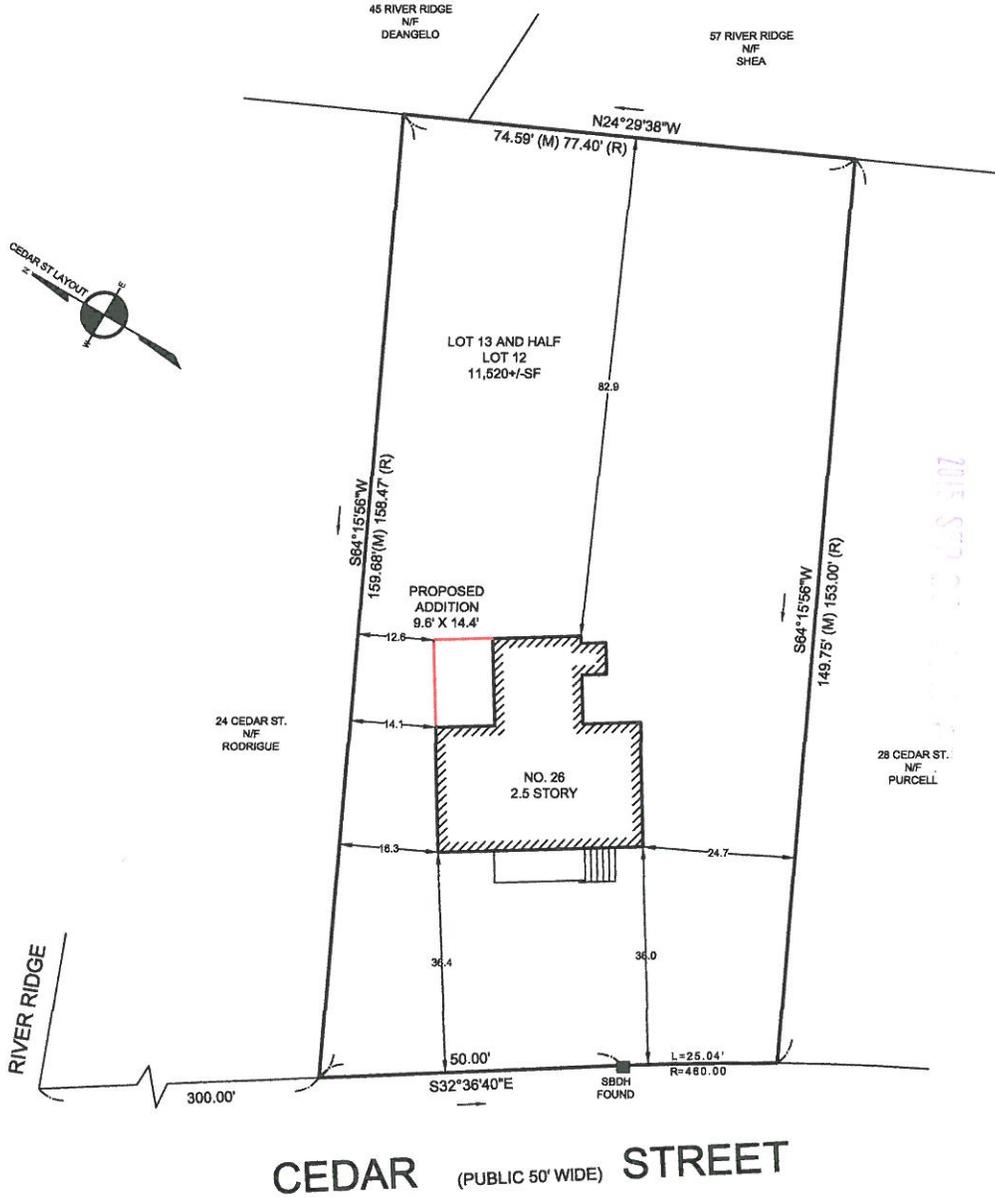
LOCATED AT
26 CEDAR STREET
WELLESLEY, MA

PREPARED FOR:
ROBERT ALFRED

SCALE: 1 INCH = 20 FEET

MASSACHUSETTS SURVEY CONSULTANTS

14 SUMNER STREET
GLOUCESTER, MA 01930
617 899-0703
WWW.MASSACHUSETTSURVEY.COM



CERTIFICATION

I CERTIFY THAT THIS PLAN WAS MADE FROM AN INSTRUMENT SURVEY ON THE GROUND BETWEEN THE DATES OF AUGUST 25 AND SEPTEMBER 12, 2015 AND ALL STRUCTURES ARE LOCATED AS SHOWN HEREON.

I HEREBY CERTIFY THAT THE PROPERTY LINES SHOWN ARE LINES DIVIDING EXISTING OWNERSHIPS, AND THE LINES OF STREETS AND WAY SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED, AND THAT NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIPS OR FOR NEW WAYS ARE SHOWN.

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.

THOMAS BERNARDI P.L.S.

DATE: SEPTEMBER 14, 2015



REFERENCES

DEED: BOOK 33276, PAGE 491
PLAN: PLAN BOOK 12, PLAN 502
PLAN: CEDAR STREET LAYOUT ENG. DEPT.
PLAN: 968 OF 1968

EXISTING LOT COVERAGE = 8%, 1,004 +/- SF
PROPOSED LOT COVERAGE = 10%, 1,142 +/- SF