



ZONING BOARD OF APPEALS

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ZBA 2015-80
 Petition of Alex & Melissa Marx
 47 Carisbrooke Road

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 Alex & Melissa Marx requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that construction of one-story, two-story and second story additions that will meet all setback requirements, on an existing nonconforming structure with less than required left side yard setbacks, at 47 Carisbrooke Road, in a 20,000 square foot Single Residence District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

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 Patrick Ahearn, Architect, Mike Tartamella, Architect, and David Himmelberger, Esq., representing Alex and Melissa Marx, the Petitioner. Mr. Ahearn said that the pre-existing nonconforming condition exists at the corner of the garage. He said that the house was constructed in 1935. He said that the side yard setback is 19.2 feet where 20 feet is required. He said that all of the proposed additions comply with Zoning setbacks. He said that they will not increase any nonconformity with the proposed renovations.

Mr. Ahearn said that it is a significantly large lot at 53,888 square feet, in a 20,000 square foot Single Residence District. He said that the lot is 2.7 times the size of minimum required lot size. He said that the proposal is for an addition at the back of the house and a small study off of the southern side that will be well within the required setbacks.

Mr. Ahearn said that the bulk of the additions will not be visible from a public way. He said that the existing Total Living Area plus Garage (TLAG) is 5,216 square feet and the proposed TLAG for the addition is 2,165 square feet, for a total TLAG of 7,381 square feet. He said that all of the properties on Carisbrooke Road have significant acreage and the bulk of the houses are significant in scale. He said that this is one of the premier streets in the community.

Mr. Ahearn said that all of the natural grading and landscaping will remain. He said that the addition at the back of the house is on a flat lawn. He said that there will be no change to topography or grade. He said that the only lighting required is at the doorway to comply with Building Code. He said that there is no impact to abutting properties. He said that there is significant screening on both sides. He said that the

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minor addition at the front matches the existing architecture. He said that the scale of the building will be consistent with other structures on the road. He said that the existing screening will stay in place or be enhanced. He said that there is little or no impact on abutting properties with the additions. He said that there will be no change of open space from public view. He said that there is no negative drainage off site. He said that it is a flat lawn. He said that in 1999 and 2006 the landscape work was done over and stone walls were created. He said that the whole back of the property was reconstructed in 2006 for the former owner. He said that current owners just bought the house. He said that circulation is consistent with what is existing and will have no impact to abutters.

Mr. Ahearn said that the architecture at the front of the house will not change much. He said that there will be an addition of a small one-story office off of the living room. He said that all of the materials will match the existing house. He said that the dormers are repeated. He said that a small wall will emulate the wall that sits in front of the parking court. He said that the addition at the rear of the house will not be visible from a public way. He said that there will be a one-story area and a potting at the rear of the existing garage. He said that they will modify the family room with a small solarium and an office study off of the living room.

The Board confirmed that the current existing ridgeline at the top of the house will not be changing. The Board asked about the handling of the rainwater conductors. Mr. Ahearn said that there is no change to that. He said that they could do two recharge leaders on the addition to go to the backyard. The Board said that area of town has substantial pockets of ledge. Mr. Ahearn said that the former owner re-graded the backyard and built significant terraced stone walls. He said that this whole backyard is a recharge area.

The Board asked about protection of trees in the area to be affected. The Board said that it appears that there are no existing trees that will be affected by the additions.

The Board said that Mr. Ahearn has not yet determined whether they will need any additional stormwater drywells. Mr. Ahearn said that because of the 2006 site work that was done, he did not think that there will be a need to add them.

The Board said that the Planning Board expressed a concern about exterior lighting. The Board said that there is a parking court in front of the garages that would contain any light spillage. The Board said that there are significant setbacks.

The Board asked if there was an Order of Conditions. Mr. Tartamella said that there was an Order of Conditions filed for the 2007 approval. He said that the currently proposed work is outside of the buffer zone.

The Board asked if both additions will have basements. Mr. Tartamella said that the main portions of the house will have a basement but the garage portion will not. He said that will be slab. The Board confirmed that there will be no major excavation at the rear of the house. Mr. Tartamella said that there will not be major excavation beyond the existing garage.

The Board said that it received a memo from Pam Helenik, Wetlands Administrator, who stated that the property is in a Town Jurisdictional Resource Area. Mr. Himmelberger said that the issue that is before

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the Board is for a special permit. He said that WPC is attempting to re-write State Law and local regulations by changing the State definition of intermittent stream and the significance of that. The Board said that the Wetlands Protection Act and the Town Bylaw regulate that. Mr. Himmelberger said that currently the WPC is in the process of preparing new regulations. He said that, in the proposed set of regulations, they would declare that, notwithstanding the fact that the stream bed to the rear of the property is intermittent and not subject to the 200 foot Riverfront, WPC says that it is a perennial stream. He said that would be by declaration and therefore be subject to a 200 foot buffer. He said that he did not believe that WPC has the authority under the bylaw which empowers them to enforce State Regulations to create new regulations that change the State Law. He said that would be the same thing as the WPC saying that they are now going to apply in Wellesley 300 feet and 200 feet for vegetated wetlands. He said that he did not believe that WPC can do that. He said that it is a usurpation of the State Law. The Board said that local bylaws are more restrictive than the State Act. Mr. Himmelberger said that WPC would need to amend the bylaw. He said that they cannot change the bylaw by regulation nor can they declare a change in the regulation prospectively and apply it today, which is what they are attempting to do. The Board said that it is not in the ZBA's purview. Mr. Himmelberger said that the Applicant will not be going before the WPC. He said that if the WPC believes that they have the authority to take enforcement action, they can. He said that WPC concedes, in Ms. Helenik's email, that the brook is intermittent.

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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 47 Carisbrooke Road, in a 20,000 square foot Single Residence District, with a minimum left side yard setback of 19.2 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 one-story, two-story and second story additions that will meet all setback requirements, on an existing nonconforming structure with less than required left side yard setbacks, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan, dated 9/15/15, stamped by Terrence M. Ryan, Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 9/16/15, prepared by Patrick Ahearn, Architect, 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.

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It is the opinion of this Authority that construction of one-story, two-story and second story additions that will meet all setback requirements, on an existing nonconforming structure with less than required left 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 one-story, two-story and second story additions that will meet all setback requirements, 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 constructions plans.

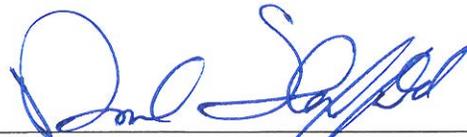
If construction has not commenced, except for good cause, this Special Permit shall expire two years after the date time stamped on this decision.

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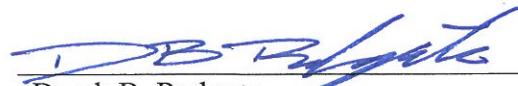
APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.



David G. Sheffield, Acting Chairman



Robert W. Levy



Derek B. Redgate

cc: Planning Board
Inspector of Buildings
lrm

