

TOWN OF WELLESLEY



MASSACHUSETTS

ZONING BOARD OF APPEALS

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ZBA 2016-33
Petition of Jeffrey & Catherine Cerio
19 Abbott Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, May 5, 2016, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of Jeffrey & Catherine Cerio requesting a variance pursuant to the provisions of Section XIV-D, Section XIX and Section XXIV-D of the Zoning Bylaw and a Special Permit/Finding pursuant to the provisions of Section XIV-D, Section XVII and Section XXV of the Zoning Bylaw that construction of a two-story addition and deck with steps, and installation of an air conditioning condenser with less than required rear yard setbacks, on an existing nonconforming structure with less than required front yard, rear yard and right side yard setbacks, on a 4,179 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, in a Historic District, at 19 Abbott Street, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. Existing lot coverage is 21.18 percent and proposed lot coverage will be 25.82 percent.

On April 19, 2016, 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 Brian Alim, Architect, and Jeffrey and Catherine Cerio, the Petitioner.

Mr. Alim said that they went before the Historic District Commission (HDC) for review and the project was approved with conditions that have been met over the past few weeks.

Mr. Alim said that the proposal is to add a 10 foot by 15 foot mudroom to the left side of the house, with a small stoop and step and a new air conditioner (ac) pad off of the rear of the house. He said that it is a nonconforming lot and there will be a small overage of lot coverage due to the new stoop.

The Chairman said that the application says that the HDC wanted the deck and stairs that cause the lot coverage overage. He said that the Board received a letter from the HDC stating that was not one of the things that they required. Mr. Cerio said that there was a lot of back and forth with the HDC. He said that, as last approved at their most recent meeting, the plans had the porch and steps. Mr. Alim said that he originally based his calculations without the stoop and later found out that the wood stoop counted as a raised structure and that, along with the bulkhead and ac pad, count in the lot coverage calculations. Ms. Cerio said that the HDC thought that the initial size was small and asked that it be increased. The Chairman said that HDC recommended the change but did not require it.

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The Chairman said that the HDC commented in its letter about a new decorative brick detail that was not on the approved plans. Mr. Alim said that they met with HDC three times. He said that the first variation they submitted had the brick detail. He said that there were comments at the meeting about showing more detail on it. He said that the Cerios determined that they did not need to have that detail and decided to eliminate it at the next meeting. He said that HDC then asked where the brick detail was, so he drew it on the next set of plans that are before this Board. The Chairman said that any action that ZBA takes will be subject to a condition that the Petitioner cannot proceed with the brick detail without HDC approval.

The Board said that this property is located in a Historic District on a postage stamp sized lot. The Board said that trying to do anything on a lot this size would be a challenge. Mr. Alim said that they tried to keep the left side setback at 20 feet. The Board said that the issues are lot coverage and setbacks. The Board said that there is a small buildable footprint on this lot.

The Board asked if the Petitioner spoke with the neighbors to the left and the rear. Mr. Cerio said that the neighbors to the rear are present at the public hearing. He said that they support the project, particularly placement of the ac unit. He said that they opened up the plans to all of the neighbors before the process started. Ms. Cerio said that the neighbors were present at the three HDC meetings.

The Board asked about moving the ac toward the bulkhead and as far away from the lot line as possible. Mr. Alim that they would like to have the option to move it over. Ms. Cerio said that they chose that area because it is the most hidden and is closest to the neighbor's ac unit. The Board said that if the ac unit is moved, a revised survey must be submitted.

Thaddeus Heuer, 17 Abbott Street, said that he is the immediate abutter to the right. He said that he was at the HDC meetings and had concerns about the right side of the house that were resolved. He said that what the HDC approved did not indicate that a variance would be required for lot coverage. He said that he is not concerned about the variance for setbacks. He said that it is a tight lot and lot lines are at a premium in this neighborhood. He said that he does not have a problem with placement of the ac unit because it is related to the shape of the lot. He said that his concern is with a lot coverage variance because it is a self imposed hardship. He said that the designer said that the reason that the lot coverage is over is because he forgot to include the stoop in the design that was presented to the HDC and later came back and put it in the design that was presented to the ZBA. He said that it does not meet the requirements of 40A because shape of lot is not size and it would create an effect to the neighborhood that would be detrimental. He said that the designer represented to the HDC that this would be under 25 percent lot coverage, which is why everyone assumed that it would be just fine. He said that the letter in support of the application that was submitted to ZBA indicates that it was HDC's requirement that the stoop be enlarged from 42 inches to 120 inches. He said that the stoop was not calculated at any point in any of the plans that were presented to HDC. He said that the plans presented to the HDC, dated March 8, 2016, showed lot coverage of 1,044 square feet, which is exactly at 25 percent lot coverage. He said that it is a small lot neighborhood and any percentage over lot coverage has a greater impact on the neighborhood as a whole.

The Chairman discussed allowing the petition to be withdrawn without prejudice so that the Petitioner and the neighbors can discuss the plans further and try to come to an agreement. Mr. Cerio said that Mr. Heuer will probably object whether they get together to discuss the plans or not. He said that they presented their plans to the neighbors and requested their input well before they went before any public

forum. He said that he offered multiple solutions to address Mr. Heuer's concerns. He said that all were rejected in lieu of Mr. Heuer's desire to litigate this through public meetings. He said that the request is for a fraction over 25 percent. He said that, in his opinion, this is a strategic tactic on Mr. Heuer's part to further delay the project. Ms. Cerio said that Mr. Heuer's complaint, post-HDC and after the ZBA Public Hearing announcement card went out, is only now being brought up to them. She said that there has been no attempt on Mr. Heuer's part to speak with the Cerios about his issue in a private manner that they could have addressed. A Board member said that the ultimate decision is the Board's, not the abutters'. He said that the Petitioner has filed an application and can ask the Board to rule on it.

Annette and Lawrence Luchene, 12 Waban Street, said that they are the rear abutters. Ms. Luchene said that they have a view of this whole project and are probably the ones that will see it the most. She said that the houses are very close. She said that this is the neighborhood that they all bought into. She said that they are pleased to have homeowners. She said that it has been a rental for the 20 years that they have lived in their house. She said that they are very pleased to have someone who is willing to invest in this property. She said that the house is very difficult to raise a family in. She said that what the Cerios have been doing there has been very tasteful. She said that she has been to two of the HDC meetings and thought that everyone in the neighborhood knew that there would be a variance, even if it was not said. She said that it was discussed and the neighbors knew that the Cerios would be coming before the ZBA. She said that there have been short timeframes for the Cerios to redo their plans. She said that it is difficult to keep making changes. She said that different people came to the HDC meetings and there have been different opinions. She said that things that were approved at one meeting were thrown out at the next meeting. She said that it feels like it has been a never ending process. She said that she drove back from Maine today to be at this hearing to support the project.

Heather Lamplough, Senior Planner, Town of Wellesley, said that the plans that the HDC approved had the deck, as submitted to the ZBA. She said that what was missing from the HDC plans was the lot coverage calculations, which does not concern the HDC. She said that the HDC approved the deck as is, just without the knowledge that it would require a variance. She said that whether a project requires a special permit or a variance has no bearing on a HDC decision. She said that if the Applicant wants to reduce the size of the deck, they will have to come back for another public hearing. She said that would push the project out approximately 60 days.

The Board confirmed that the Luchenes had no objection to the Cerios moving the ac pad closer to the bulkhead.

Statement of Facts

The subject property is located at 19 Abbott Street, on a 4,179 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, in a Historic District, with a minimum front yard setback of 16.6 feet, a minimum rear yard setback of 6.2 feet, and a minimum right side yard setback of 10.4 feet.

The Petitioner is requesting a variance pursuant to the provisions of Section XIVD, Section XIX and Section XXIV-D of the Zoning Bylaw and a special permit/finding pursuant to the provisions of Section XIVD, Section XVII and Section XXV of the Zoning Bylaw that construction of a two-story addition and deck with steps, and installation of an air conditioning condenser with less than required rear yard

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setbacks, on an existing nonconforming structure with less than required front yard, rear yard and right side yard setbacks, on a 4,179 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, in a Historic District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure. Existing lot coverage is 21.18 percent and proposed lot coverage will be 25.82 percent.

Explanation of Variance Request, dated 3/31/16, from Brian Charles Alim, a Plot Plan, dated 3/15/16, stamped by Joseph R. Sullivan, Professional Land Surveyor, Existing & Proposed Floor Plans & Elevation Drawings, dated 3/8/16 & 3/14/16, prepared by BC Alim Architectural Design, and photographs were submitted.

On March 10, 2016, the Historic District Commission reviewed the plans and issued a Certificate of Appropriateness, HDC 16-01.

On May 3, 2016, the Planning Board reviewed the petition and recommended that the variance be granted.

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 although construction of a two-story addition with less than required front yard setbacks, on a 4,179 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, in a Historic District, is increasing a nonconformity, such increase shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for construction of a two-story addition with less than required front yard setbacks, on a 4,179 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, in a Historic District, in accordance with the submitted plot plan and construction drawings.

It is the opinion of this Authority that literal enforcement of the provisions of the Zoning Bylaw for installation of an air conditioner within the rear setback anywhere between the proposed location and the bulkhead would involve substantial hardship, financial or otherwise, to the Petitioner owing to circumstances relating to the shape of the lot, especially affecting such land or structures but not generally the zoning district in which it is located, the hardship has not been self-created, 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 locate an air conditioner within the rear setback anywhere between the proposed location and the bulkhead, subject to the following condition:

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- A new plot plan shall be submitted if the proposed location of the air conditioner condenser is moved closer to the bulkhead.

It is the opinion of this Authority that literal enforcement of the provisions of the Zoning Bylaw for construction of a two-story addition and deck with steps, and installation of an air conditioner, that will increase existing lot coverage from 21.18 percent to 25.82 percent, on a 4,179 square foot lot in a Single Residence District in which the minimum lot size is 10,000 square feet, in a Historic District, would involve substantial hardship, financial or otherwise, to the petitioner owing to circumstances relating to the shape of the lot, especially affecting such land or structures but not generally the zoning district in which it is located, the hardship has not been self-created, 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 for construction of a two-story addition and deck with steps, and installation of an air conditioning condenser, that will increase existing lot coverage from 21.18 percent to 25.82 percent.

This decision is subject to the following condition:

- The Petitioner cannot proceed with the brick detail without HDC approval.

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 Special Permit shall expire two years after the date time stamped on this decision.

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

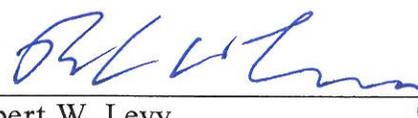
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APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE
PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN
THE
OFFICE OF THE TOWN CLERK.


Richard L. Seegel, Chairman


Robert W. Levy


Walter B. Adams

cc: Planning Board
Inspector of Buildings
lrm

