



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

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ZBA 90-17
Petition of Dean Behrend
136 Worcester Street

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, March 22, 1990 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) of the Town Hall, 525 Washington Street, Wellesley, on the petition of DEAN BEHREND requesting a variance from the terms of Section II A 7 and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw to allow construction of an oversized one and 1/2 story garage, approximately 40 feet by 25 feet for the dual uses of horticulture and automobile storage at 136 WORCESTER STREET, in a Single Residence District. The size of said garage is larger than a garage which is accessory to a single family use, much less customary or incidental to such use.

On March 5, 1990, the petitioner requested a hearing before this Board and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Dean Behrend, who presented photographs of the area and of the existing house, which will be his residence when the remodeling has been completed. Mr. Behrend said that annuals and perennials would be grown inside the garage and that the extra length is needed to store soils and trays necessary for potting the plants before moving them to the greenhouse. Using the plans submitted, Mr. Behrend showed that the transfer of the plants from the garage to the greenhouse would be an internally contained process. The garage would also be used to store two automobiles.

Mr. Behrend stated that all of the equipment used in his landscaping construction business is held on his site in Natick, and none of it would ever be held on the subject property. The subject property would be used for holding plants, trees and shrubs. Large plants acquired would be temporarily planted for use at another site in the future. The subject site might also be used as a nursery, but no customers would come to the site. The additional 8,859 square foot lot would be used as a holding area for nursery stock.

Rose Cioppa, 114 Worcester Street, was concerned that fertilizer would be stockpiled on the property and that trucks would be coming through Dearborn Street. She was afraid that the property would not be well maintained as there had been problems on the site in the past.

Mr. Behrend said that the property has already been cleaned up and will be maintained in an orderly manner.

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Statement of Fact

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The subject property is located at 136 Worcester Street, in a Single Residence District, on a 19,370 square foot lot on which a conforming single family residence is located. The petitioner also owns an 8,859 square foot lot fronting on Worcester Street, which abuts the subject property on the easterly lot line.

The petitioner is requesting a variance to construct an oversized garage, approximately 40 feet by 28 feet which will be attached to a proposed greenhouse. The garage will be used for the storage of two automobiles as well as storage of plant and potting materials and the assembling of plant trays to be used in the greenhouse. The size of the garage is larger than that which can properly be said to be accessory to a single family use or customary or incidental to such use as required in Section II A 7 of the Zoning Bylaw which states:

"Such accessory uses as are customary in connection with the uses enumerated in clauses 1, 2, 3, 4, 5, or 6, and are incidental thereto, including a private garage and a private stable."

A Plot Plan dated February 12, 1990, drawn by John J. McDonnell, Registered Land Surveyor; construction drawings and elevations dated 2/5/90, revised 2/14/90; and photographs were submitted.

The Planning Board, on March 13, 1990, reviewed the petition and were unsure whether the proposed construction is allowed by right in the district. If the use was to be determined as prohibited, the Board would oppose granting a variance.

Decision

This Authority has made a careful study of the evidence presented. The oversized garage is larger than a garage constructed as a customary accessory use for a single family dwelling.

It is the opinion of this Authority that in this particular instance, both of the proposed uses for which the garage will be constructed are allowed under Section II of the Zoning Bylaw. Section II 5 states:

"Agriculture, horticulture, floriculture, including the use of the premises for the sale of natural products raised thereon..."

is a use allowed by right in a Single Residence District. Accessory uses customary to this use, as well as private garages are allowed by right in a Single Residence District, as stated in Section II A 7 of the Zoning Bylaw and quoted in the foregoing Statement of Facts.

It is the opinion of this Authority that the combination of the two allowed uses which necessitates the size of the garage being larger than customary can be allowed in this particular instance.

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It is the further opinion of this Authority that a literal enforcement of the provisions of Section II of the Zoning Bylaw would involve a substantial hardship to the petitioner and that desirable relief may be granted without substantially derogating from the intent or purpose of the Zoning Bylaw.

Therefore, the requested variance is granted to construct a garage in accordance with the Plot Plan and construction drawings submitted as noted in the foregoing Statement of Facts subject to the following conditions:

1. That there shall be no outside storage of trucks or heavy equipment on the property.
2. That no equipment or vehicles used in the petitioner's landscaping business shall be kept at the subject location at any time.
3. That there shall be no outside storage of loam, fertilizer, seed or any other materials related to any horticultural activity on the property.
4. That all conditions imposed by the Wetlands Protections Committee shall be met.

The Inspector of Buildings is hereby authorized to issue a permit for the construction upon his receipt and approval of a building application and construction plans.

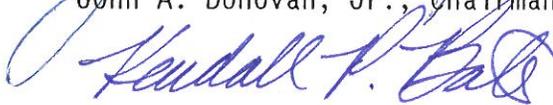
If the rights authorized by a variance are not exercised within one year of the date of grant of such variance, they shall lapse and may be re-established only after notice and a new hearing pursuant to Section XXIV-D of the Zoning Bylaw.

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.

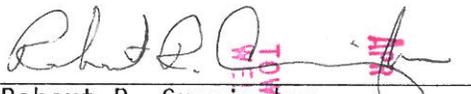
cc: Planning Board
Inspector of Buildings
edg



John A. Donovan, Jr., Chairman



Kendall P. Bates



Robert R. Cunningham

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