



ZONING BOARD OF APPEALS  
TOWN HALL WELLESLEY, MA 02181

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ZBA 91-19  
Petition of Robert and Leslie Arruda  
37 Morses Pond Road

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, March 28, 1991 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 ROBERT AND LESLIE ARRUDA requesting a variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw to allow demolition of an existing nonconforming garage and construction of a two-story detached garage, approximately 22 feet by 28 feet at their premises at 37 MORSES POND ROAD, in a Single Residence District. As 120 square feet of the 566 square foot garage would be constructed on the portion of the lot located in the Town of Natick, a variance is requested as there will be no setback from the left side lot line of the portion of the property located in the Town of Wellesley.

On March 11, 1991, the petitioners requested a hearing before this Authority and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Robert Arruda, who was accompanied by his architect, Daniel Tobias. Mr. Arruda stated that the existing garage was not only falling apart, but encroached on his neighbor's property. He would like to demolish it and construct a new garage. The Town line goes through the middle of the proposed garage.

The Board expressed concern regarding the potential for using a two-story garage which is to be equipped with a full heating system, a bathroom, and a stair to the second story, as a second dwelling unit. Mr. Arruda assured the Board that this would never occur.

The Board also noted the Planning Board's recommendation of denial as it appeared there were other locations on the lot that the garage could be built in compliance. Mr. Arruda responded that he had considered other sites, but the location of the driveway, the shrubbery and trees determined his choice.

Statement of Facts

The nonconforming garage is located at 37 Morses Pond Road, in a Single Residence District, on a 10,542 lot of which about 2,400 square feet lie in the Town of Natick. The existing garage is nonconforming in its left and rear yard setbacks. The right rear corner of the garage encroaches onto the property owned by Patricia A. Stanton.

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The petitioners are requesting a variance to demolish the existing garage in order to construct a two-story garage, approximately 22 feet by 28 feet, of which approximately 120 square feet would be located in the Town of Natick, leaving no setback on the left side from the Wellesley Town line.

A Plot Plan adated March 6, 1991, drawn by Henry E. Thomas, Jr., Registered Land Surveyor; construction drawings and elevations; and photographs were submitted.

The Planning Board, on March 18, 1991, voted to recommend denial of the petition as it appears there are other locations on the lot for a garage to be built in conformity with zoning. The Board questions whether the statutory criteria for a variance are present.

Decision

This Authority has made a careful study of the evidence submitted. The proposed garage would not be in compliance with the requirements of Section XIX of the Zoning Bylaw.

Variances may only be granted by the Permit Granting Authority once they have found any or all of the following (Section XXIV-D 1. as quoted from the Zoning Bylaw):

- "1. ....
  - a. Literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant owing to circumstances relating to: i) soil conditions, ii) shape, or iii) topography of such land or structures, especially affecting such land or structures but not generally affecting the zoning district in which it is located; and the hardship shall not have been self-created; and
  - b. Desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of this Zoning Bylaw."

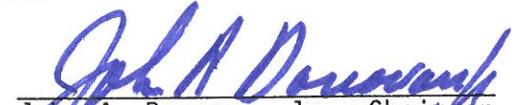
This Authority fails to find "substantial hardship" within the meaning of Section XXIV-D of the Zoning Bylaw.

Therefore, it is the unanimous opinion of this Authority that this request for a variance be denied, and this petition is dismissed.

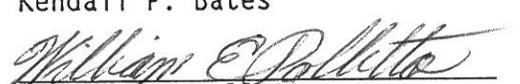
APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PURSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING OF THIS DECISION IN THE OFFICE OF THE TOWN CLERK.

cc: Planning Board  
Inspector of Buildings

edg

  
John A. Donovan, Jr., Chairman

  
Kendall P. Bates

  
William E. Polletta

