



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

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ZBA 93-40
Petition of Michael J. Cameron
17 Fenmere Avenue

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, May 20, 1993 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) at the Town Hall, 525 Washington Street, Wellesley, on the petition of MICHAEL J. CAMERON 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 one-story dwelling with less than the required front, right and left side yard setbacks, and construction of a two-story dwelling approximately 38 feet by 22 feet with less than the required right and left side yard setbacks at 17 FENMERE AVENUE, in a Single Residence District.

On May 3, 1993, the petitioner 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 Michael Cameron, who was accompanied by his attorney, William Mone. Mr. Mone said that Mr. Cameron is the prospective buyer of the property, but the sale is contingent on the granting of the variance. The proposed demolition and new construction would result in very little change in the overall nonconformity of the site, and would not be a detriment to the neighborhood, or nullify the Zoning Bylaw. The shape of the lot with frontage of only 50 feet creates the hardship. The proposed construction will improve the lot and will be more conforming than the existing house.

Mr. Cameron explained that the existing house is only 18 feet wide. The proposed house will be 22 feet wide as anything less than 22 feet would result in a two bedroom house, which would not allow for future needs. The proposed house will have 6 rooms including 3 bedrooms.

Mr. Cameron said that at a meeting with the neighbors, they had raised issues of sun and height. The house will not block sun for the neighbors as the sun rises at the rear of the dwelling and sets at the front. The height limitation in a single residence district is 45 feet. The house will be 27 feet high, which is the minimum height feasible to afford the 3 bedrooms on the second floor, as the house is only 22 feet wide.

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He continued that the hardship is the shape of the lot. If the lot were 62 feet by 80 feet, rather than 50 feet by 100 feet, the house would conform to the 20 foot side yard setbacks. The proposed house will conform to the front setback, which the existing house does not; will conform to the rear yard setback; will maintain the right side yard setback of 11.6 feet, but will encroach an additional 2.9 feet on the left side in order for the house to have a width of 22 feet. The proposal will not be more detrimental to the neighbors as there will be a family in residence in a well built and well maintained home.

Charles Wheeler, current owner of the property, said that although they have owned the property for almost 10 years, they have never lived in it because it is too small. The house has always been a rental property, but lately, the turnover has been constant. The proposed construction will eliminate transient tenants and will improve the neighborhood. The property does not generate enough income to maintain it as other homes are maintained in the neighborhood.

Jeff Peterson, 19 Fenmere Avenue, expressed strong opposition to the petition. He felt that the proposed two-story house is too large for the undersized 5,000 square foot lot, particularly as the house will be only 16 feet from his lot line and 11.6 feet from the right side line. He added that if the existing property were well maintained, it might be sold rather than rented.

Mary Miller Carson, 15 Fenmere Avenue, who said she was also representing her mother, owner of 56 Manor Avenue, expressed strong opposition to the petition. Ms. Carson said that the additional length and height of the proposed dwelling, only 11.6 feet from her property line, would be very detrimental to her privacy, and that the size and scope of the project would be detrimental to the neighborhood.

Robert Grome, 3 Pinevale Avenue, opposed the petition as he felt that the two-story house would have a negative impact on the neighborhood. He opposed the size and setbacks of the proposed dwelling.

Charles Merhib, 18 Fenmere Avenue, expressed opposition to the petition as requesting too large a house on an undersized lot, which would be detrimental to the neighborhood.

Dolores Brady, 24 Fenmere Avenue, and John Bazzari, 23 Fenmere Avenue, opposed the petition for the aforesaid reasons.

Mr. Mone responded that due to the shape of the lot, Mr. Cameron is constrained in terms of size and location of the house, and that the requested relief is only an additional 3 feet from the left side line. In his opinion, the construction would improve the premises.

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The Board noted that the main objection of the neighbors is that the proposed house is too large for the lot. Mr. Cameron responded that there are many houses on undersized lots in the neighborhood, and many of the homes on the street have two stories.

Statement of Facts

The subject one-story nonconforming dwelling is located at 17 Fenmere Avenue, in a Single Residence District, on a 5,000 square foot lot, with a minimum front yard clearance of 21.6 feet, a minimum right side yard clearance of 11.6 feet and a minimum left side yard clearance of 19.3 feet. The property is owned by Charles and Sandra Wheeler, who do not occupy the premises. A Purchase and Sale Agreement, contingent on the grant of the requested variance, has been signed by the owners and the petitioner.

The petitioner is requesting a variance to demolish the existing nonconforming dwelling and construct a two-story dwelling, approximately 22 feet by 38 feet, with a minimum right side yard clearance of 11.6 feet and a minimum left side yard clearance of 16.4 feet, with a conforming deck approximately 10 feet by 10 feet at the rear of the dwelling.

A Plot Plan dated April 22, 1993, drawn by Paul J. DeSimone, Registered Land Surveyor; Floor plans and elevations dated July 27, 1987, drawn by New England Design Build Inc.; and photographs were submitted.

On May 11, 1993, the Planning Board reviewed the petition and voted to recommend that the plans be modified so that the maximum height is no greater than 15 feet, or 1 1/2 stories, as the building design, as requested, places the substantial bulk of the two-story wall too close to the left side abutter. Reduction of the height would lessen the detrimental impact on the abutters.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The proposed dwelling would not conform to the Zoning Bylaw as noted in the foregoing Statement of Facts.

Variances may 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):

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"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 is of the opinion that although the shape of the lot, with 50 foot frontage may places constraints on construction, this circumstance is not unique to the subject property, as many lots in the neighborhood have the same configuration.

It is the further opinion of this Authority that the size of the proposed dwelling on the undersized lot would create a substantial detriment to the neighborhood, which has expressed overwhelming opposition to the petition.

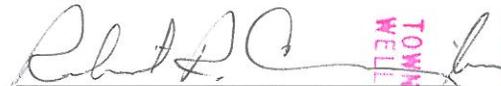
Therefore, it is the unanimous opinion of this Authority that this request for a variance be denied, and this petition is dismissed.

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


Robert R. Cunningham

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DOROTHY HOLMES

ROBERT GROME

RATIO OF BUILDING TO LOT AREA

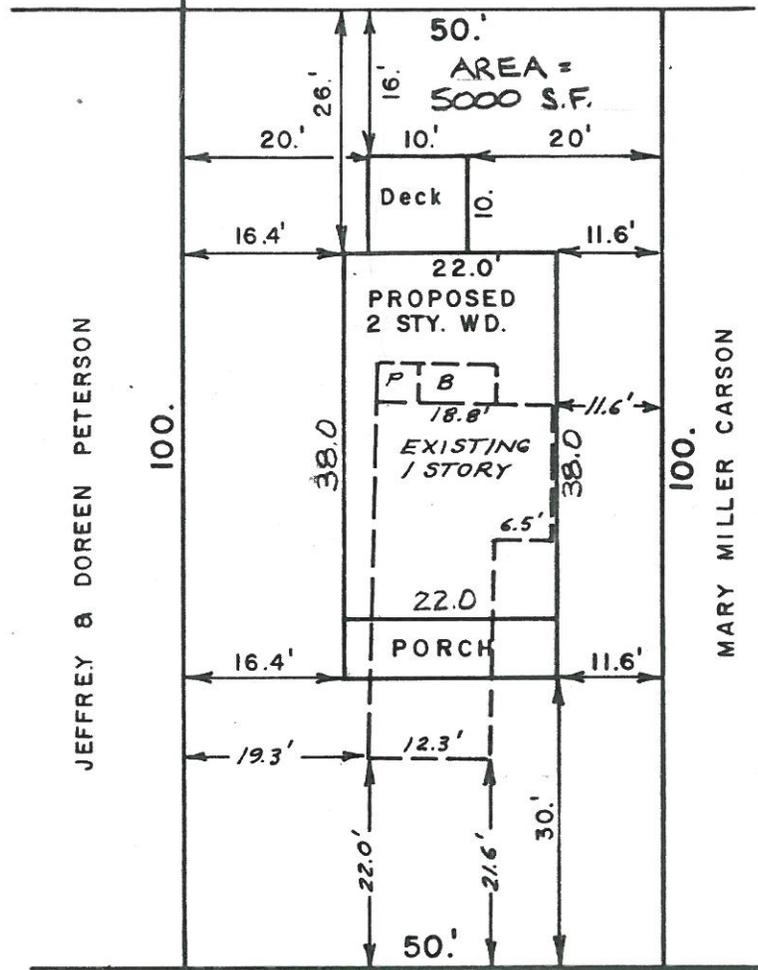
REQUIRED: LESS THAN 25%

EXISTING: 10.9%

PROPOSED: 16.7%

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JEFFREY & DOREEN PETERSON

MARY MILLER CARSON

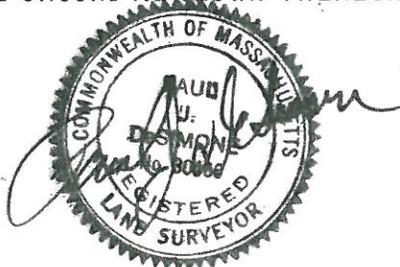
FENMERE AVENUE

NOTES:

1. BEING LOTS 337 & 338 SHOWN ON A PLAN BY J.S. CROSSMAN C.E. DATED NOV. 1913 AND RECORDED WITH NORFOLK REGISTRY OF DEEDS IN PLAN BOOK 69, PLAN 3324.
2. THIS PLOT PLAN WAS MADE FROM AN INSTRUMENT SURVEY.
3. THIS PLOT PLAN IS TO ACCOMPANY AN APPLICATION FOR A VARIANCE TO ALTER THE EXISTING STRUCTURE.



I HEREBY CERTIFY THAT THE EXISTING BUILDING SHOWN ON THIS PLAN IS LOCATED ON THE GROUND AS SHOWN THEREON



CERTIFIED PLOT PLAN
WELLESLEY, MASS.

SCALE: 1" = 20'

APRIL 22, 1993

OWNER: CHARLES & SANDRA WHEELER

SELWYN & KIRWIN ASSOC. - REG. LAND SURVRS
14 LINDEN AVE. — BELMONT, MASS.