



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

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ZBA 95-11
Petition of Jane E. O'Brien
22 Kenilworth Circle

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, January 19, 1995 at 8:10 p.m. in the Selectmen's Meeting Room (Conference Room B) at the Town Hall, 525 Washington Street, Wellesley, on the petition of JANE E. O'BRIEN requesting a variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw to allow construction of a two-story addition approximately 19.6 feet by 8 feet, consisting of an unenclosed porch on the first floor and a deck on the second floor, with a 1 foot 3 inch trellis surrounding the entire addition at her conforming dwelling at 22 KENILWORTH CIRCLE, in a Single Residence District. Both the deck and the trellis would have less than the required rear yard setback.

On January 3, 1995, 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 was Jane O'Brien, who was accompanied by her architect, Frederick Kubitz. Mrs. O'Brien explained that her first architect had told her she could build a deck of any size as there were no setback requirements for a deck. Upon consultation with her surveyor, she transposed the setback and Mr. Kubitz drew a deck according to the figures he was given. When the surveyor drew the proposed deck on the plot plan, it was discovered that the deck would not conform to the rear setback. As the lot has a very irregular shape, there is no other place that the deck could be sited.

Mrs. O'Brien said that 75% of the new addition has been completed. Doors and windows have been installed and are positioned to open onto the open porch and second floor deck. The rear entrance is the main egress to the house, which backs up to Beebe Meadow. At present, there is a 4 foot drop from the addition to the ground. There are no neighbors in opposition to the plan.

Mr. Kubitz said that the depth of the porch is usable at 8 feet, but would not be at 7 feet, as the doors open out, reducing the usable space. The corners of the rectangle have been removed to reduce the amount of encroachment.

The Board noted that the irregular shape of the lot was a definite hardship, but expressed concern about any enclosure of the porch in the future. The Board stated that a condition would be added that the addition could never be enclosed.

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No other person present had any comment on the petition.

Statement of Facts

The subject conforming dwelling is located at 22 Kenilworth Circle, in a Single Residence District, on a 15,000 square foot lot, which has an unusual shape.

The petitioner is requesting a variance to construct a two-story addition consisting of an unenclosed porch on the first floor and a deck on the second floor, which would be approximately 19.6 feet by 8 feet, and would have a minimum rear yard setback of 19.3 feet at the northeast corner; and a 1 foot 3 inch trellis surrounding the entire addition would have a minimum rear yard setback of 18.1 feet from the same corner.

A Plot Plan dated December 23, 1994, drawn by Joseph Marcklinger, Registered Land Surveyor; Floor Plans and Elevations dated 8/16/94, drawn by Frederick Kubitz; and photographs were submitted.

On January 10, 1995, the Planning Board reviewed the petition and voted to offer no comment.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The subject dwelling conforms to the current Zoning Bylaw, but the proposed two-story addition and trellis would have a minimum rear yard clearance of 19.3 feet for the addition, and 18.1 feet for the trellis.

It is the opinion of this Authority that, because of the irregular and unusual shape of the lot and the location of the house on the lot, a literal enforcement of the provisions of Section XIX 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.

However, it is the decided opinion of this Authority that no present or future owner should be allowed to take advantage of the grant of this variance to enclose and incorporate the two-story addition and trellis, which provide additional, nonconforming open living areas, into the internal living space of the dwelling.

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Therefore, the requested variance is granted, subject to construction in conformance with the submitted plot plan and architectural drawings, on the condition that the 19.6 feet by 8 foot two-story addition and 1 foot 3 inch trellis area shall never be enclosed or incorporated into the internal living space of the dwelling.

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

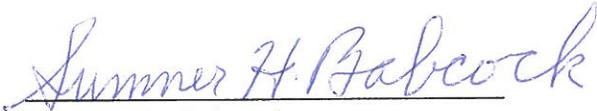
If the rights authorized by this variance are not exercised within one year of the date of grant of said variance, they shall lapse and may be re-established only after notice and a new hearing pursuant to Section XXIV-D of the Zoning Bylaw.

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



Kendall P. Bates, Acting Chairman



Sumner H. Babcock



William E. Polletta

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