

**ZONING BOARD OF APPEALS**

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02181-5992

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ZBA 97-21

Petition of Wendy L. Warren
12 Wilson Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, March 27, 1997 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 WENDY L. WARREN requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that the construction of a 23.9 foot by 14 foot deck with less than the required right side yard setback and less than the required front setback from a paper street which is the extension of COTTONWOOD ROAD, at her nonconforming dwelling with less than the required left side yard setback and less than the required front setback from said paper street, at 12 WILSON STREET, in a Single Residence District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On March 6, 1997, 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 Wendy Warren, who was accompanied by her surveyor, Verne Porter. Mr. Porter said that Ms. Warren would like to construct a deck which requires a variance. The deck would replace the existing concrete patio with a raised landing. The paper street has not been built, and it is expected that it will never be constructed, which might be the reason that a variance was originally granted to construct the house. All of the land on the opposite side of the paper street is owned by the Town.

Mr. Porter added that the Wetlands Protection Committee has granted approval for the project.

The Board stated that it understood Ms. Warren was aware of the potential change in the Zoning Bylaw to be acted on at Town Meeting, which might make the Board's decision inoperable. The proposed change in the allowed percentage of lot coverage would make the deck nonconforming, as the total lot coverage currently allowed is 25%, but would be reduced to 20% for this property which is over 10,000 square feet. The addition of the deck would increase the lot coverage to 22.6%, which would be nonconforming.

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Ms. Warren said that the building permit to remodel the kitchen and install sliding glass doors was taken out on October 29, 1996. She had purchased the property in October. She was not aware that the deck was nonconforming until she recently submitted the plot plan for a building permit for the deck.

Statement of Facts

The subject property is located at 12 Wilson Street, in a Single Residence District, on a 10,473 square foot lot, and has a minimum left side yard clearance of 19.82 feet and a minimum front yard clearance of 10.52 feet from the paper street which is an unconstructed extension of Cottonwood Road.

The petitioner is requesting a Special Permit/Finding that the construction of a 23.9 foot by 14 foot deck, which will have a minimum front setback of 11.57 feet from the paper street and a minimum right side yard setback of 11.97 will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan dated February 21, 1997, drawn by Verne T. Porter, Jr., Registered Professional Land Surveyor; floor plans and elevations and photographs were submitted.

On March 6, 1997, the Wetlands Protection Committee voted to issue an Order of Conditions (DEP 324-238) for the project.

On March 11, 1997, the Planning Board reviewed the petition and voted to offer no objection to the request provided the deck remains uncovered.

Decision

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

It is the finding of this Authority that the proposed deck will neither intensify the existing nonconformance nor create new nonconformity as it will be less nonconforming than the existing dwelling. The side yard is bounded by a paper street, which, in all probability will not be built, and there are no residential abutters to the north and west.

Therefore, a Special Permit is hereby granted, as voted unanimously by this Authority at the Public Hearing, to construct the deck in accordance with the submitted plot plan and construction drawings and in accordance with the Order of Conditions (DEP 324-238) issued by the Wetlands Protection Committee.

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ZBA 97-21
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It is the decision of this Authority that the grant of this Special Permit should not be construed to include any relief from a proposed change in the Zoning Bylaw (Article 28) currently before Town Meeting, which would render the percentage of lot coverage of this property nonconforming due to the construction of said deck.

Failing passage of Article 28 by Town Meeting, the Inspector of Buildings is hereby authorized to issue a permit for the construction of said deck upon receipt and approval of a building application and detailed construction plans. If Article 28 is adopted by Town Meeting, before a building permit can be issued, the petitioner will be required to return to the Board of Appeals for relief as the construction of said deck would create a nonconformance in regard to percentage of lot coverage which is presently conforming.

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.


John A. Donovan, Jr., Chairman

Kendall P. Bates

cc: Planning Board
Wetlands Protection Committee
Inspector of Buildings
edg


William E. Polletta

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