

**ZONING BOARD OF APPEALS**

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ZBA 2006-80
Petition of H & R Development LLC
31A Oak Street

Petition of H & R DEVELOPMENT LLC requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing nonconforming dwelling with less than required side yard setbacks and construction of a two-family dwelling that will meet front, side, and rear yard setback requirements, on a lot with no frontage, at 31A OAK STREET, in a General Residence District, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On October 16, 2006, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

November 2, 2006

Presenting the case at the hearing was Sanjeev Singh, who said that there is a ten foot deeded right of way that fronts on Oak Street. He said that the lot at 31A Oak Street has no frontage, which is not unusual in the neighborhood.

The Board said that it will consider the application as being amended to request a Special Permit to build a two-family dwelling as opposed to two townhouse units. The proposed construction is labeled as two-family on the plans, which is allowed in a General Residence District.

Mr. Singh said that there are several cape-style dwellings in the neighborhood. He is proposing to demolish the existing structure and construct a new cape-style two-family at a location on the lot that will meet setback requirements.

Mr. Singh said that the proposed structure will be 31 feet high from average grade, which is in scale with other dwellings in the neighborhood.

Mr. Singh said that there is a 20 foot wide sewer line easement on the property. He said that there is a common driveway that serves three lots southeast of 31A Oak Street. He said that he believes that the easement is for support of those three lots.

The Board said that the dwelling in the middle on the south side will be facing the garages directly. Mr. Singh said that he could add windows there to break up the solid mass.

Mr. Singh said that is an existing chain link fence on the south side that they are proposing to remove. The Board said that there is a sense of openness in the neighborhood that could be preserved with natural screening.

Linda Ralli Meade, 31 Oak Street, said that she lives with her husband and her mother in the house that is located in front of 31A Oak Street. She said that her mother has lived there for approximately 58 years. Her mother, who is 84 years old, accesses the back of the house from the driveway. Ms. Meade said that she is concerned that putting a two-family in back will increase traffic on the 10 foot driveway that serves as the Right of Way.

The Board said that there is no document before it describing the agreement for the Right of Way. The Board said that a copy of the deed granting the original Right of Way should be submitted.

Ms. Meade said that she is concerned with heavy trucks using the driveway. The Board asked Ms. Meade if she had any objection to Mr. Singh resurfacing the driveway after completion of the project. Ms. Meade said that she had no objection.

Walter Wickersham, 25 Oak Street, said that he would like to see the neighborhood feel preserved. He said that the design of the structure will be an improvement to the area.

Joseph Guarnieri, 80 Hundreds Road, said that he owns the property at 23 Oak Street. He asked about frontage for the lot. The Board said that there is no frontage for the lot.

Francesca Wier, 39C Oak Street said that putting a one-family on the property would be a better alternative for the neighbors.

Ms. Wier said that traffic on the 10 foot driveway will be doubled.

The Board said that Mr. Singh can build a two-family on the lot as a matter of right. He has come before the Board for a Special Permit because his lot is nonconforming.

Mr. Singh said that there are very few General Residence Districts where two-families dwellings are allowed. He said that this lot is a natural place to have a two-family dwelling as it is surrounded by townhouses.

Celeste Guarnieri, 23 Oak Street, said that the proposal would be substantially more detrimental to the neighborhood. The neighborhood is changing from single family residences to condominiums.

The Board said that the proposal will meet all of the Zoning requirements, with the exception of the grandfathered frontage issue.

The Board asked if there was a history of water problems for the existing structure. Mr. Singh said that there was none that he knew of, although there is a sump pump in the basement.

Mr. Singh said that they will connect to sewer lines at the street.

The Board requested that Mr. Singh meet with the neighbors to show them his plans and try to come to some understanding over the issues they are concerned about. The Board said that documentation of the discussions with the neighbors should be submitted.

The Board said that a 20-scale plot plan should be submitted.

The Board voted to continue the hearing to December 7, 2006.

December 7, 2006

Presenting the case was Sanjeev Singh, who said that the Board had requested that he speak to the neighbors about landscaping, traffic during construction and other issues. Mr. Singh said that he submitted a revised site plan, a right side elevation drawing, and copies of deeds.

Mr. Singh said that he looked at the sewer line as it leaves the property. There is a six inch sewer line, which will be more than adequate for the two units.

Mr. Singh said that the neighbors expressed a preference for natural screening rather than a fence. He said that he will plant arborvitae-type shrubs on the south side of the property and low growing shrubs and bark mulch along the length of the northwest property line. All of the mature trees will be maintained along the perimeter. Standard flowering trees are also proposed.

Mr. Singh said that the neighbors' daughter will be allowed to continue to cross over the yard to get to school. The construction area will be contained.

Mr. Singh said that he spoke with the neighbors who own the property at 31 Oak Street. He said that they had no special requests with respect to screening.

Mr. Singh said that he will install signs to indicate where contractors should park during construction. He has offered to restore the Ralli's driveway after construction, when the driveways for the new units are installed.

The Board said that the addition of dormers and windows improved the scale of the proposed structure.

Peter Meade, 31 Oak Street, submitted a letter, dated December 7, 2006, from his mother-in-law, Mary Ralli. He said that Mr. Singh came by on December 6, 2006. Mr. Meade said that he felt that there was not sufficient time to discuss their concerns.

The Board read Mrs. Ralli's letter.

The Board said that there is an existing split rail fence between the properties at 31 and 31A Oak Street that is deteriorated. Mr. Meade said that Mr. Singh should speak with Mrs. Ralli to discuss what she would like to see as a replacement for the deteriorated split rail fence. Mr. Singh said that he will replace the fence with whatever the neighbors would like to have there.

Mr. Singh said that he will install motion lights at the garages. The Board said that there should be no light spillage onto adjacent properties.

Statement of Facts

The subject property is located at 31A Oak Street, on a 16,783 square foot lot with no frontage, in a General Residence District, with a minimum right side yard setback of 10.25 feet.

The petitioner is requesting a Special Permit/Finding that demolition of an existing nonconforming dwelling with less than required side yard setbacks and construction of a two-family dwelling that will meet front, side, and rear yard setback requirements, on a lot with no frontage, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan dated 10/11/06, stamped by Steven G. Donnini, Professional Land Surveyor, Existing and Proposed Floor Plans, dated 10/6/06, Proposed Elevation Drawings, dated 10/6/06, and Proposed Right Side Elevation Drawing, revised 12/5/06, drawn by Sanjeev Singh, and photographs were submitted.

On October 24, 2006, the Planning Board reviewed the petition and had no objection to granting the request.

Decision

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

It is the finding of this Authority that demolition of an existing nonconforming dwelling with less than required side yard setbacks and construction of a two-family dwelling that will meet front, side, and rear yard setback requirements shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure, as the construction shall neither intensify the existing nonconformance, nor shall it create a new nonconformity, as the side yard setbacks shall be improved to meet Zoning requirements.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for demolition of an existing nonconforming dwelling with less than required side yard setbacks and construction of a two-family dwelling that will meet all Zoning requirements, subject to the following conditions:

ZBA 2006-80
Petition of H & R Development LLC
31A Oak Street

1. Revised plans be submitted showing the additional windows, patios, and plantings. The plans shall contain title blocks, scale, and north arrows.
2. Accommodations shall be made with the owners of 31 Oak Street for an agreed upon schedule of excavation for utilities.
3. There shall be no construction vehicle parking on the right of way.
4. All construction vehicles and employee parking shall be on Oak Street.
5. The right of way shall be plated over each night to allow for full use of the driveway.
6. Upon completion of construction, the right of way shall be rebuilt and repaved.
7. There shall be no light spillage onto adjacent properties.

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

ZBA 2006-80
Petition of H & R Development LLC
31A Oak Street

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.

Richard L. Seegel, Chairman

Cynthia S. Hibbard

David G. Sheffield

cc: Planning Board
Inspector of Buildings
lrm