



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

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FEB 8 11 AM '94

ZBA 93-89
Petition of Donald Ball
67 Donizetti Street

Pursuant to due notice, the Special Permit Granting Authority and the Permit Granting Authority held a Public Hearing on Thursday, November 18, 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 DONALD BALL requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw to allow construction of a second-story addition approximately 21.6 feet by 26.4 feet above an existing nonconforming garage and breezeway at his nonconforming dwelling with less than the required left side yard, at 67 DONIZETTI STREET, in a Single Residence District.

A variance from the terms of Section XIX and pursuant to the provisions of Section XXIV-D of the Zoning Bylaw is requested to construct a carport with a roof deck approximately 8 feet by 12 feet at the rear of the nonconforming dwelling. Said carport and deck will have less than the required left side yard clearance.

On November 2, 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 were Donald and Kate Ball. Mr. Ball said that they wished to add a second floor bedroom and bath on the second floor and a half bath on the first floor. Their two teenage daughters are presently occupying the existing second bedroom, which is very small. Mrs. Ball said that she suffers from fibromyalgia and needs a first floor bathroom. Mr. Ball added that the construction would stay within the footprint on the nonconforming side. The carport will be used in the winter.

Victor Cononi, 65 Donizetti Street, the right side abutter, expressed opposition to the petition. Mr. Cononi said that he had lived in his home since 1941, and that the Balls' home had belonged to his brother. There is a 15 foot sewer easement on the left side of the property which is not shown on the plot plan. The existing shed is in the middle of the easement. He stated that he did not want to live next door to the house, if the second story were added, because of the way the house would look.

Ed Crowley, part owner of 71 Donizetti Street, said he was not in favor of granting side yard variances in the neighborhood.

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The Board asked the Balls if they would consider redesigning the right side of the addition in order to accommodate Mr. Cononi's concerns. The Balls agreed to submit a new design. The Board unanimously voted to continue the hearing on the petition to the Public Hearing on January 13, 1994.

Presenting the case at the Public Hearing on January 13, 1994, which had been duly noticed, was Donald Ball, who was accompanied by his builder, David Ott. Mr. Ball said that, in response to Mr. Cononi's suggestion, he had added a window and a porch roof overhanging the garage on the right side of the dwelling which faces Mr. Cononi's property. The window will break up the blank wall, and will enable them to see the back yard.

The Board stated that the construction drawings should be signed and dated, and noted that the plot plan had been modified to show the porch roof overhang, but had no revision date on it. Mr. Ott said that the footprint had not changed; only the 3 foot roof overhang had been added. The overhang does not encroach on the 20 foot sideline setback. The Board stated that a new signed plot plan with the date of revision would be required.

Victor Cononi, right side abutter at 65 Donizetti Street, expressed continued opposition to the petition. He said that there would be increased traffic congestion due to the narrow driveway and the lack of turnaround space, and he was opposed to the filling in of the house. He stated that if the petition were granted, he would appeal it.

The Board said it appreciated Mr. Cononi's feelings, and in response to his concerns, had requested the Balls to change the design of the house on the right side.

In response to the Board's questions, Mr. Ball reiterated the need for the additional bedroom and bath, as stated in the previous hearing.

Statement of Facts

The subject nonconforming dwelling is located at 67 Donizetti Street, on an 11,408 square foot lot, in a Single Residence District, and has a minimum left side yard clearance of 15.2 feet and a minimum right side yard clearance of 18 feet.

The petitioner is requesting a Special Permit/Finding to construct a second story addition approximately 21.6 feet by 26.4 feet above an existing garage and breezeway of the same dimensions. A 4 foot by 11 foot breezeway infill with a conforming right side yard of 25.7 feet will be added. The garage and breezeway have a conforming right side yard setback of 25.6 feet from the right rear corner of the foundation, 22.6 from the porch overhang, and a minimum left side yard setback of 15.2 feet. The nonconforming portion of the second story will be approximately 4.8 feet by 15.7 feet.

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A variance is also requested to construct a carport approximately 8 feet by 12 feet, with a roof deck of the same dimensions, at the rear of the dwelling. Said carport will have a conforming right side yard clearance of 30.2 feet and a minimum left side yard clearance of 19.4 feet.

A Plot Plan dated October 21, 1993, drawn by Philip L. Pattison, Registered Land Surveyor; floor plans and elevations prepared by David Ott; and photographs were submitted with the original petition. A revised plot plan that does not show the date of revision, and revised elevations and second floor plan dated 12/16/94 were submitted on December 27, 1993.

On November 9, 1993, the Planning Board reviewed the original petition and voted to recommend denial of the Special Permit as the proposed addition would add excessive living area into an inadequate side yard setback.

Letters in support of the petition were received from Barbara and Scott Mohr, 40 Calvin Road; Edwin and Maria Stone, 63 Donizetti Street; and Luis A. Fonseca, 68 Donizetti Street.

Decision

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

It is the opinion of this Authority that the requested second story addition will intensify the existing nonconformity as it will add a 4.8 foot by 15.7 foot area of second floor of living space on the nonconforming side of the dwelling. However, no additional nonconformities will be created, as the proposed second story will not exceed the existing footprint.

This Authority is cognizant of the objections of the abutter on the right side of the subject dwelling. However, as the petitioner has amended the facade of the right side of the dwelling in an effort to respond to the abutter's objections; and as the abutter on the nonconforming side of the property, who would be most impacted by the addition, has voiced no objection to the proposal; and as the second floor addition will not create additional nonconformities, this Authority finds that the proposed addition will not be substantially more detrimental to the neighborhood than the existing nonconforming dwelling.

A permit to construct the proposed second story addition is hereby granted subject to construction in accordance with the revised plot plan and construction drawings, and subject to the requirement that a new plot plan showing the dimensions of the porch overhang, the date of revision, and a new stamp shall be submitted to the office of the Board of Appeals prior to the issuance of a Building Permit.

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In regard to the variance request for construction of a carport with a roof deck, it is the opinion of this Authority that the proposed carport conforms to the present lines of the house and does not alter the relationship of the house to the left side lot line, and in fact, is less nonconforming than the existing dwelling.

It is the opinion of this Authority that because of the 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.

Therefore, the requested variance is granted subject to construction in accordance with the plot plan and revised elevation drawings, and subject to the same condition regarding the revision of the plot plan as heretofore required.

The Inspector of Buildings is hereby authorized to issue a permit for the construction of both the second story addition, and the carport with the roof deck, upon his receipt and approval of a building application and detailed construction plans and upon the petitioner's submission of the revised plot plan to the office of the Board of Appeals.

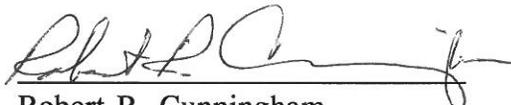
If the rights authorized by a variance are not exercised within one year of the date of grant of said variance, they shall lapse, and may be re-established only after notice and a new hearing pursuant to Section XXIV-D of the Zoning Bylaw.

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


John A. Donovan, Jr., Chairman


Kendall P. Bates

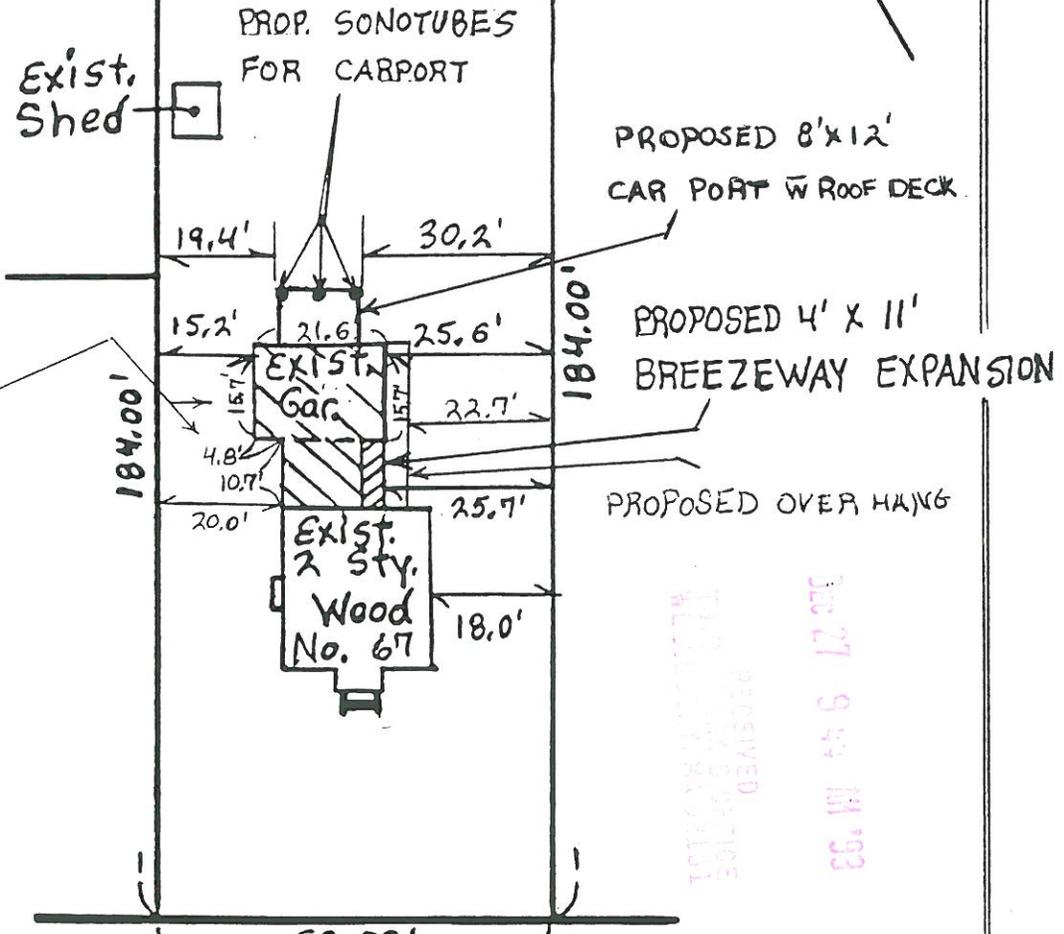

Robert R. Cunningham

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CERTIFIED PLOT PLAN

A = 11,408 S.F.



EXIST. GAR AND
BREEZEWAY TO BE
RAISED 1 STORY



Philip L. Pattison

62.00' ST. (No. 67)

September 23, 1993 Date Philip L. Pattison, P.L.S. Reg. Land Surveyor
 17 Snake Brook Road Address
 Wayland, Mass. 01778

RECEIVED
SEP 27 9 44 AM '93

Owner: Ball
 Address: 67 Donazette St.
 Date: 10-21-93
 Scale: 1" = 30'

Deed Book: _____ Page: _____
 Title Cert. No.: _____
 County: Norfolk
 Professional Survey
 Arlington, Mass. 617-646-1839